TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 355

FRANK COLLIS BOWERS, AS EXECUTOR OF THE ESTATE OF FRANK K. BOWERS, FORMERLY UNITED STATES COLLECTOR, ETC., PETITIONER

vs.

LAWYERS MORTGAGE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 5, 1931
CERTIORARI GRANTED OCTOBER 26, 1931

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 355

FRANK COLLIS BOWERS, AS EXECUTOR OF THE ESTATE OF FRANK K. BOWERS, FORMERLY UNITED STATES COLLECTOR, ETC., PETITIONER

VS.

LAWYERS MORTGAGE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

	Original	Print
Proceedings in U. S. C. C. A., Second Circuit	1	1
Statement under rule 13, par. 4	1	1
Record from D. C. U. S., Southern New York	2	1
Summons	2	1
Complaint	3	2
Answer	7	3
Judgment	10	4
Certificate of probable cause	12	5
Bill of exceptions	14	5
Appearances of counsel	14	6
Offers in evidence	14	6
Motions for judgment	16	6
Stipulation of facts and waiver of jury trial	17	7
Memorandum opinion, Coleman, J	33	15
Plaintiff's findings of fact and conclusions of law	39	18
Defendant's findings of fact and conclusions of law	55	26
Defendant's objections to findings	71	34
Defendant's exceptions to findings of fact and conclusions of law	72	34
Order settling bill of exceptions	73	35
Plaintiff's Exhibit M—Determination of commissioner	75	35
Exhibit Q—Contract for loan and title issuance	82	39
Exhibit R—Form of agreement	86	41
Exhibit S—Form of bond and mortgage	110	52
Exhibit T—Policy of mortgage guaranty	120	57
Exhibit U—First-mortgage certificate	128	61
Exhibit W—Letter from deputy commissioner	133	64

	Original	Print
Record from D. C. U. S., Southern New York—Continued.		
Order dispensing with printing of certain exhibits	135	64
Assignments of error	138	66
Petition and allowance of appeal	141	67
Citation on appeal (omitted in printing)	143	67
Stipulation as to record	144	68
Clerk's certificate (omitted in printing)	145	68
Opinion, Swan, J.	146	69
Dissenting opinion, Chase, J.	149	72
Judgment	151	74
Clerk's certificate (omitted in printing)	153	74
Order allowing certiorari	154	74

1 In United States Circuit Court of Appeals for the Second Circuit

L. 36/348

LAWYERS MORTGAGE CO.

vs.

FRANK K. BOWERS, COLLECTOR OF INTERNAL REVENUE

Statement under rule 13, par. 4

This suit was commenced December 29, 1925.
The name of the original parties remain the same.
Complaint filed January 5, 1926.
Answer filed June 16, 1926.
Trial was had January 29, 1929, before Honorable Frank J. Coleman, without a jury, upon written stipulation waiving jury.
Verdict directed for plaintiff, August 3, 1929.
Judgment entered October 22, 1929.
Appeal on behalf of defendant taken January 9, 1930.
Bill of exceptions filed March 21, 1930.

2 In United States District Court, Southern District of New York

L. 36/348

LAWYERS MORTGAGE COMPANY, PLAINTIFF

against

FRANK K. BOWERS, COLLECTOR OF INTERNAL REVENUE, DEFENDANT

Summons

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the honorable Augustus N. Hand, judge of the District Court of the United States for the Southern District of New York, at the city of New York, this 29th day of December, A. D. 1925.

[SEAL.] ALEX GILCHRIST, Jr., *Clerk.*

SHEARMAN & STERLING,
Plaintiff's Attorney.

Office & post office address: 55 Wall St., Borough of Manhattan, city of New York.

3 In United States District Court, Southern District of New York

[Title omitted.]

Complaint

The plaintiff for its complaint herein alleges:

For a first cause of action

I. The plaintiff is a corporation incorporated in 1893 as a title and credit guaranty corporation under Article 5 of the Insurance Law of the State of New York. During the year 1913, its certificate of incorporation was duly amended, with the consent of the Superintendent of Insurance, to set forth its purposes and powers as follows, under which it has since acted:

"Second: That it is our intention to form a corporation for the purpose of examining titles to real property and chattels real, to procure and furnish information in relation thereto, make and guarantee the corrections of searches for all instruments, liens or charges affecting the same, guarantee or insure the payment of bonds and mortgages, or notes of individuals or partnerships secured by
4 mortgages upon real property situated in this or any other State, and bonds, notes, debentures and other evidences of indebtedness of solvent corporations secured by deed of trust or mortgage upon real property situated in this or any other State, invest in, purchase and sell, with such guarantee or with guarantee only against loss by reason of defective title or incumbrances, bonds and mortgages, and notes of individuals or partnerships secured by mortgages upon improved and unincumbered real property situated in this or any other State worth fifty per centum more than the amount loaned thereon, and bonds, notes, debentures and other evidences of indebtedness of solvent corporations secured by deed of trust or mortgages upon improved and unincumbered real property situated in this State or outside of this State worth fifty per centum more than the amount loaned thereon, and guarantee and insure the owners of real property and chattels real and others interested therein against the loss by reason of defective titles thereto and other incumbrances thereon."

II. The defendant is the United States collector of internal revenue for the second district of New York.

III. On or about October 19, 1922, the plaintiff paid to the defendant $10,147 as an alleged capital-stock tax, pursuant to the provisions of section 1000 of the revenue act of 1921, for the period from July 1, 1922, to June 30, 1923, inclusive.

5 IV. Subdivision (b) of the said section 1000 of the said act expressly exempted from the said capital stock tax "any in-

surance company subject to the tax imposed by section 243 or 246"; and section 246 imposed upon "every insurance company (other than a life or mutual insurance company) a tax" expressly declared to be in lieu of the taxes imposed by sections 230 and 1000.

V. Thereafter, on or about October 31, 1923, the plaintiff filed with the defendant a claim for the refund of the said payment of $10,147, on the ground that, being an insurance company, it was not subject to the said alleged capital stock tax, which claim for refund was denied on or about August 20, 1925.

For a second cause of action

VI. The plaintiff repeats and realleges each and every allegation contained in Articles I, II, and IV of the first cause of action.

VII. On or about August 31, 1923, the plaintiff paid to the defendant $10,731 as an alleged capital stock tax pursuant to the provisions of section 1000 of the revenue act of 1921 for the period from July 1, 1923, to June 30, 1924, inclusive.

VIII. On or about October 31, 1923, the plaintiff filed with the defendant a claim for the refund of the said payment of $10,731, on the ground that, being an insurance company, it was not subject to the said alleged capital stock tax, which claim for refund was denied on or about August 20, 1925.

6 Wherefore the plaintiff demands judgment against the defendant for $20,878, with interest on $10,147 from October 19, 1922, and on $10,731 from August 31, 1923.

SHEARMAN & STERLING,
Attorneys for plaintiff.
55 Wall Street, New York, N. Y.

[*Duly sworn to by Francis K. Raynor; jurat omitted in printing.*]

In United States District Court

[Title omitted.]

Answer

The defendant, by Emory R. Buckner, United States attorney for he Southern District of New York, his attorney, answering the omplaint in the above-entitled cause:

1. Denies that he has any knowledge or information sufficient to orm a belief as to the truth of each and every allegation contained paragraph I of the complaint.

2. Denies that he has any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph I of the complaint, repeated and realleged in paragraph VI of the complaint.

8 Wherefore the defendant demands judgment dismissing the complaint together with the costs and disbursements of this action.

EMORY R. BUCKNER,
United States Attorney for the Southern District of New York,
Attorney for Defendant.

Office and post-office address: U. S. Courts and P. O. Bldg., Borough of Manhattan, city of New York.

9 [*Duly sworn to by Nathan R. Margold; jurat omitted in printing.*]

10 In United States District Court, Southern District of New York

LAWYERS MORTGAGE COMPANY, PLAINTIFF

against

FRANK K. BOWERS, COLLECTOR OF INTERNAL REVENUE, DEFENDANT

Judgment

The issues in this action having been regularly brought on for trial before honorable Frank J. Coleman, a judge of this court at a civil jury term thereof held on January 29, 1929, at the court house in the United States Post Office Building, in the Borough of Manhattan, city of New York, and the respective parties appearing by their attorneys, and the court having heard the allegations and proofs of the parties, and after due deliberation, the court having duly made and filed its decision on October 9, 1929, containing a statement of the findings of fact and the conclusions of law thereon, wherein it was provided that plaintiff is entitled to recover from the defendant the sum of $10,147, paid by it to the defendant on July 29, 1922, and the sum of $10,731, paid by it to the defendant on August 31, 1923, principal amounts, together with interest upon each thereon from the dates of payment as aforesaid as required by law, with costs actually incurred for witnesses and for summoning the same,
11 and fees paid to the clerk of the court, and plaintiff's costs having been duly adjusted at $30.00,

Now, on motion of Shearman & Sterling, attorneys for the plaintiff, it is

Adjudged that the plaintiff, Lawyers Mortgage Company, recover of the defendant, Frank K. Bowers, collector of internal revenue,

the sum of $20,878.00 principal amount, together with interest on $10,147.00 from July 29, 1922, and with interest on $10,731.00 from August 31, 1923, according to law, and its costs as taxed, the sum of $30.00, and that execution issue therefor.

Judgment this 22nd day of October, 1929.

ALEX. GILCHRIST, Jr., *Clerk.*

12 In United States District Court

[Title omitted.]

Certificate of probable cause

The plaintiff having commenced this action by personal service of a summons and complaint upon the defendant, and the defendant having appeared herein by the United States attorney for the Southern District of New York, his attorney, and judgment having been entered herein on the 22nd day of October, 1929, in favor of Lawyers Mortgage Company and against the defendant, Frank K. Bowers, collector of internal revenue, in the sum of $20,878.00 principal amount, together with interest on $10,147.00 from July 29, 1922, and with interest on $10, 731.00 from August 31, 1923, according to law, together with the costs of this action, said costs amounting to $30.00,

Now, therefore, pursuant to section 989 of the Revised Statutes of the United States, I hereby certify that there was probable cause for the acts done by the defendant, the collector of internal revenue, wherefor said judgment is due and recoverable against him.

13 Dated, New York, N. Y., Nov. 1st, 1929.

WOOLSEY,
United States District Judge.

Consented to:

CHEARMAN & STERLING,
Attorney for Plaintiff

Filed Nov. 1/29.

14 In United States District Court, Southern District of New York

L. 36/348

LAWYERS MORTGAGE COMPANY, PLAINTIFF

vs.

FRANK K. BOWERS, COLLECTOR OF INTERNAL REVENUE, DEFENDANT

Defendant's bill of exceptions

NEW YORK, *January 29, 1929.*

Above action was tried before the Hon. Frank J. Coleman, U. S. district judge, in his chambers in the Woolworth Building, at 2.30

p. m., tried by the court without a jury, pursuant to stipulation, in writing, filed herein.

Appearances of counsel

Messrs. Shearman & Sterling, attorneys for plaintiff, by H. W. Forbes, Esq., of counsel.

Hon. Charles H. Tuttle, U. S. attorney, attorney for defendant; Samuel C. Coleman, Esq., of counsel, assistant U. S. attorney.

Offers in evidence

Mr. FORBES. I offer in evidence the following paragraphs of the stipulation which has been filed with the court, dated January 17, 1929: Nos. 1, 4, 5, 8, 9, 10, 11, 12, 16, 17, 18, 21, 22, and 23.

15 I should also like to offer in evidence a copy of a letter addressed to the plaintiff by the Treasury Department under date of December 5, 1924, relating to the claims in question [referring to Exhibit W].

Mr. COLEMAN. Objected to as irrelevant and immaterial.

The COURT. It is taken with an exception.

Mr. COLEMAN. I offer in evidence paragraphs of the stipulation No. 2, 3, 6, 7, 13, 14, 15, 19, 20, and 24, with the exhibits that are referred to in the stipulation.

Mr. FORBES. Objected to.

The COURT. Objection overruled.

(Exception.)

Mr. COLEMAN. I also offer in evidence a scrap book kept by the secretary of the plaintiff, which contains all newspaper and pamphlet advertisements issued by the plaintiff during the years in question.

Mr. FORBES. Objected to.

The COURT. It is accepted in evidence with an exception to the plaintiff, and when the case goes up on appeal an arrangement may be made for offering the articles.

(Marked "Defendant's Exhibit V," of this date.)

Mr. COLEMAN. I also offer in evidence in connection with paragraph 19 of the stipulation, which refers to other companies doing business similar to the plaintiff as their principal business, descriptive matter of the business which they do carry on and the method in which it is carried on, and the documents they issue in connection with the mortgage loans.

16 The COURT. I will give the stipulation its widest scope, that they are doing exactly the same thing.

Motions for judgment

Mr. FORBES. I renew the motion originally made for judgment on the pleadings.

The COURT. Motion denied with exception.

Mr. FORBES. I also move for judgment on the evidence.

The COURT. I reserve decision.

Mr. COLEMAN. I move for judgment upon the pleadings and on the evidence produced at the trial, on the ground that the evidence shows clearly that the plaintiff is not engaged in insurance work and that the plaintiff is clearly taxable under sec. 1000 of the revenue act.

(Defendant's exhibits are marked as follows:
X1, pamphlet entitled "Specialists in Safety."
X2, X3, X4, blank forms.
X5, blank mortgage certificate.
X6, sample guarantee policy.)

17 In United States District Court

[Title omitted.]

Stipulation of facts and waiver of jury trial

Now come plaintiff and defendant in the above-entitled cause, by their respective attorneys, and thereupon it is agreed that the above case may be tried by the court without the intervention of a jury, trial by jury being hereby expressly waived, and it is further expressly agreed that the following facts shall be taken as true, and that the respective paragraphs of this stipulation may be introduced as evidence thereof by either party, subject, however, to the objections on the ground of immateriality and irrelevancy herein specifically stated, provided, however, that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence in the case.

It is requested by the parties hereto that the court, upon the decision of the said case, separately state its findings of fact and conclusions of law.

18 1. Plaintiff is a corporation duly incorporated as the Lawyers Mortgage Insurance Company on or about February 9, 1893, under Article V of the insurance law of the State of New York (Laws of 1892, chapter 690) pertaining to title and credit guaranty corporations, its charter or certificate of incorporation having been duly filed on said date in the office of the superintendent of insurance of the State of New York.

A true and correct copy of said charter or certificate of incorporation is attached hereto and made a part hereof as Exhibit A.

2. By order of the Supreme Court of the State of New York, entered October 3, 1903, the name of the company was duly changed to Lawyers Mortgage Company.

3. On or about January 10, 1905, the plaintiff duly amended the statement of its purposes as contained in its original certificate of incorporation, and filed in the office of the superintendent of insur-

ance of said State of New York as amended certificate, a copy of which is hereto attached and made a part hereof as Exhibit B.

4. On or about December 18, 1913, plaintiff's certificate of incorporation, with the consent of said superintendent of insurance, was further duly amended so as to include in the statement of the purposes and powers of the company all the powers which might be included in the certificate of incorporation of a title guaranty corporation organized under Article V, section 170, paragraph 1, of the insurance law, as amended by chapter 215 of the Laws of 1913.

19 A true and correct copy of said amended certificate of incorporation is hereto attached and made a part hereof as Exhibit C.

5. Plaintiff, since the date of its incorporation, has always been, and now is, subject to examination by, and supervision of, the superintendent of insurance of the State of New York and is, and has been, subject to all the provisions of the insurance law of the State of New York applicable to so-called title and credit guaranty corporations organized thereunder, and is, and has been, required to file, and has filed, annually with the said superintendent of insurance on forms approved by him statements of its condition as of December 31 of each year.

True and correct copies of plaintiff's annual statements for the calendar years ending December 31, 1921, and December 31, 1922, are attached hereto and made a part hereof as Exhibits D and E, respectively.

6. Plaintiff each year publishes for the information of its stockholders annual reports showing the condition of the company, its assets and liabilities, earnings and surplus, for the preceding year.

(Objected to by the plaintiff as immaterial and irrelevant.)

Attached hereto and made a part hereof are copies of plaintiff's annual reports for the calendar years 1921 and 1922, marked "Exhibits F and G," respectively.

(Same objection by plaintiff.)

20 7. A copy of plaintiff's by-laws, in effect during the calendar years 1921 and 1922, is attached and made a part hereof as Exhibit H.

(Objected to by the plaintiff as immaterial and irrelevant.)

8. On or about July 29, 1922, plaintiff voluntarily, but, as plaintiff now claims, erroneously filed with defendant a capital-stock tax return for the period from July 1, 1922, to June 30, 1923, inclusive, and on or about November 3, 1922, paid to the defendant $10,147, the amount of the alleged capital-stock tax shown on the said return.

A true and correct copy of the said return is hereto attached and made a part hereof as Exhibit I.

9. Thereafter, on or about November 14, 1923, plaintiff filed with the defendant a claim for the refund of the said sum of $10,147, which claim was thereafter duly rejected.

A true and correct copy of the said claim for refund is hereto attached and made a part hereof as Exhibit J.

10. On or about July 27, 1923, plaintiff voluntarily, but, as plaintiff now claims, erroneously filed with defendant a capital-stock tax return for the period from July 1, 1923, to June 30, 1924, inclusive, and on or about September 4, 1923, paid to the defendant $10,731, the amount of the alleged capital-stock tax shown on the said return.

A true and correct copy of the said return is hereto attached and made a part hereof as Exhibit K.

21 11. On or about November 14, 1923, plaintiff filed with defendant a claim for refund of the said sum of $10,731, which claim was thereafter duly rejected.

A true and correct copy of the said claim for refund is hereto attached and made a part hereof as Exhibit L.

12. On or about August 20, 1925, the said claims for refund (Exhibit J and Exhibit L) were denied by a letter dated August 20, 1925, a copy of which is hereto attached and made a part hereof as Exhibit M.

13. On or about March 15, 1922, plaintiff filed with defendant a consolidated income-tax return for itself and its subsidiary companies, the Nassau-Maiden Lane Loan Building Corporation, Liberty Brokerage Company, and Elemco Realty Company, Inc., for the calendar year 1921, including therein as taxable income its lending and extension fees, hereinafter explained in detail, as well as its other taxable income, and thereafter paid to the defendant the amount of the alleged income taxes shown thereon.

A true and correct copy of the said return is attached hereto and made a part hereof as Exhibit N.

14. On or about March 14, 1923, plaintiff filed with defendant a consolidated income-tax return for itself and its subsidiary companies above mentioned for the calendar year 1922, including therein as taxable income its lending and extension fees, hereinafter explained in detail, as well as its other taxable income, and

22 thereafter paid to the defendant the amount of the alleged income taxes shown thereon.

A true and correct copy of the said return is attached hereto and made a part hereof as Exhibit O.

15. On or about March 15, 1924, plaintiff filed with the defendant a consolidated income-tax return for itself and its subsidiary companies for the year 1923, including therein as taxable income its lending and extension fees, hereinafter explained in detail, as well as its other taxable income, and thereafter paid the amount of the alleged income taxes shown thereon.

A true and correct copy of the said return is attached hereto and made a part hereof as Exhibit P.

16. Plaintiff has never engaged in the business of insuring titles to real estate, nor has it ever issued policies of title insurance, although authorized by its charter so to do. The business of the plaintiff, and the manner of conducting it is, and was, at all the times material to this action, substantially as follows (it being under-

stood that wherever the word "insure," or any of its derivatives, is used with reference to the business of the plaintiff, the defendant denies that such word is properly used with reference thereto):

(a) Plaintiff receives applications for loans on real-estate security in New York City and vicinity. Where an application is for a loan on improved property, the plaintiff causes its appraisers to determine whether, in their opinion, the value of the property
23 is sufficient to justify the loan applied for. Where the application is for a loan on property on which a building is to be erected (commonly called a "building loan"), the plaintiff causes its appraisers to determine from an examination of the plans and specifications submitted and from an investigation of the financial responsibility of the applicant whether, in their opinion, the proposed loan is a desirable one for the plaintiff to make. If the report of the appraisers is favorable, the prospective borrower usually signs a formal contract for the loan upon one of the plaintiff's regular forms, a copy of which is attached hereto marked "Exhibit Q." If the loan is a building loan, the borrower subsequently signs a formal building loan contract on one of plaintiff's forms therefor, a copy of which is attached hereto marked "Exhibit R," setting forth the terms and conditions upon which the loan will be advanced to the borrower. A copy of the formal contract (Exhibit Q) is at once turned over to a title insurance company, which issues its report on the condition of the title and furnishes a survey, and, after the closing of the loan, delivers its policy of title insurance.

Upon closing a loan on improved property, the borrower executes a bond and first mortgage on the premises to the plaintiff in the customary form, a specimen of the printed form supplied by the plaintiff and frequently used being attached hereto and made a part hereof as Exhibit S, or causes an existing bond and mortgage to be duly assigned to the plaintiff; and the plaintiff pays to the bor-
24 rower the face amount of the principal of the loan, less the charges of the title insurance company for title insurance and survey, necessary disbursements for drawing and recording papers, and the mortgage recording tax (so far as such charges have not already been paid or taken care of by the borrower) and less a lending fee, at the prevailing rates, which includes its appraisal charges; and such lending fees constitute a part of the gross income of the plaintiff. In the case of a building loan, the borrower upon closing executes a bond and first mortgage to the plaintiff and the plaintiff makes advances to the borrower in accordance with the terms of the contract, the charges and lending fee being handled in the same way as in the case of a loan on improved property.

(b) The plaintiff receives from investors and others requests to purchase from plaintiff mortgage loans, or participations therein, the payment of which is to be insured or guaranteed by plaintiff in the manner hereinafter described, and also frequently invites, and specially during the years 1921–1924, inclusive, did invite, offers to pur-

chase said bonds and mortgages or participations therein. Where the plaintiff holds a mortgage loan satisfactory to the applicant, the procedure transferring the same to the applicant is in one of the following ways:

(1) The bond and mortgage is sold as a whole and assigned to a purchaser at its face value. As part of the transaction, the
25 company delivers to the purchaser its so-called policy of mortgage guaranty, a specimen copy of which is hereto attached and made a part hereof as Exhibit T. This instrument, Exhibit T, recites the name of the assignee; and in paragraph marked "First" thereof is inserted the rate of interest, which is ordinarily one-half of one per centum less than the rate of interest specified in the bond and mortgage itself. Such difference between the rate of interest specified in the bond and mortgage itself and the rate specified in Exhibit T (usually one-half of one per centum as aforesaid) is, when collected, retained by the plaintiff in accordance with the terms of Exhibit T. Such difference is designated a premium in the exhibits hereto attached and in business usage is called a premium; but the defendant denies that the term "premium," in its legal and its correct meaning, is applicable thereto and objects to its characterization as such herein upon the ground that evidence as to the term used is irrelevant and immaterial.

(2) The procedure in paragraph (1) above is followed where there is a complete assignment of the bond and mortgage to a single purchaser. The plaintiff also assigns to purchasers fractional interests or participations in bonds and mortgages, especially those for large amounts. For that purpose, the plaintiff issues to such holders its so-called "guaranteed first-mortgage certificate," a
26 specimen copy of which is attached hereto and made a part hereof as Exhibit U. For example, where the original bond and mortgage was for $100,000, with interest at six per cent per annum and the investor paid to the plaintiff $10,000 for a participation therein, Exhibit U would recite the receipt of $10,000, the assignment of an undivided interest to the extent of $10,000 in the bond and mortgage of $100,000 and the guarantee by the plaintiff of the payment to the holder of interest at the rate of five and one-half per cent per annum and of the principal in full. This difference (usually one-half of one per cent) between the rate of interest specified in the bond and mortgage and the rate of interest specified in the participation certificate is retained by the plaintiff, when collected, in accordance with the terms of Exhibit U. Such difference is designated a premium in the exhibits hereto attached and in business usage is called a premium; but the defendant denies that the term "premium," in its legal and its correct meaning, is applicable thereto and objects to its characterization as such herein upon the ground that evidence as to the term used is irrelevant and immaterial.

(c) Plaintiff also receives from owners of outstanding bonds and mortgages applications to insure or guarantee in the manner herein described the payment of such bonds and mortgages, as evidenced by its so-called policy, Exhibit T; and in some cases a lender,
27 about to make a mortgage loan, makes it a condition that the plaintiff shall guarantee the payment of the mortgage, in which case the application for the so-called policy is submitted by the prospective borrower. In both such cases the plaintiff, if it accepts such application, issues an instrument in the form of Exhibit T for the principal sum of the bond and mortgage, guaranteeing the payment of interest at one-half of one per centum less than the rate specified in the bond and mortgage itself. Such difference between the rate specified in the bond and mortgage itself and the rate specified in Exhibit T, is, when collected, retained by plaintiff in accordance with the terms of Exhibit T. Such difference is designated a premium in the exhibits hereto attached and in business usage is called a premium; but the defendant denies that the term "premium," in its legal and its correct meaning, is applicable thereto and objects to its characterization as such herein upon the ground that evidence as to the term used is irrelevant and immaterial. Before issuing its so-called policy, Exhibit T, the plaintiff causes the customary search and survey to be made, the expense of which is paid by the applicant for the loan. Its business done in this manner, while substantial in amount, constitutes only a small percentage of the total business of the plaintiff.

(d) In occasional cases there are investors who desire to take mortgage loans, or participations therein, before such loans are closed. In such cases such investors pay to the plaintiff in
28 advance the amount which they wish to invest; and the plaintiff upon closing the desired loan and making the actual advance to the borrower, assigns the bond and mortgage to the investor and delivers to him its so-called policy, Exhibit T, or delivers its guaranteed mortgage certificate, Exhibit U, such transactions being in all other respects similar in detail to those above described.

17. The primary purpose of the plaintiff in making loans on bonds and mortgages is not for investment, but for the ultimate sale of the bonds and mortgages, either by way of complete assignments of bond and mortgage or by way of its guaranteed mortgage certificates, the proceeds from such sales being returned into the general funds of the plaintiff, from which investments and reinvestments in similar transactions are made in the ordinary course of plaintiff's business. In assigning a bond and mortgage the plaintiff always enters into the agreement evidence by Exhibit T, and the assignment of fractional interests is always evidenced by Exhibit U. In neither case does the plaintiff make any profit by selling a bond and mortgage, or a fractional interest therein, at more than its face value or more than the amount advanced by the plaintiff thereon, including therein the charges and fees above described.

18. As stated above, the plaintiff in making mortgage loans customarily charges the borrower a fee for its services, known as a lending fee. If, when the mortgage falls due, the borrower desires to extend the time of payment, and the plaintiff is willing to grant such extension, the plaintiff customarily charges the borrower an extension fee, which includes its appraisal service. Such extension fees constitute a part of the gross income of the plaintiff.

Such original loans, and such extensions, are usually for a term of five years, though in the case of small loans the term is frequently three years.

Such lending fees and extension fees charged by the plaintiff are at the prevailing rates charged by lenders, whether individuals, partnerships, or corporations under whatever law of the State of New York incorporated, for mortgage loans and extensions in the city of New York, where the plaintiff's business is conducted, the rates for building loans being higher than for loans on improved property, since the lender must examine plans and must keep in constant touch with the building operations in order to see that the plans are complied with and to determine when the advances become due.

The plaintiff's lending, extension fees, so-called premiums, and interest earned on bonds and mortgages held by the plaintiff (computed on the accrual basis) were for the years 1922, 1923, and 1924, respectively, as follows:

	Lending fees	Extension fees	Premiums	Interest
Year 1922	$655, 283. 70	$214, 303. 56	$619, 986. 38	$372, 796. 12
Year 1923	990, 855. 37	73, 745. 71	750, 803. 21	426, 842. 31
Year 1924				

19. All other corporations incorporated under the provisions of article V of the insurance law of the State of New York which engage in guaranteeing mortgages follow the same general method of doing business as the plaintiff, with the exception of corporations affiliated with some title or trust company which do business only with such affiliated companies and not with the general public. At least two corporations incorporated under the banking law of the State of New York make mortgage loans and sell bonds and mortgages and participations therein, with their guaranty, in New York City as their principal business, under the same general method of doing business as the plaintiff, making such reports to the State banking department as are required by the provisions of the banking law.

20. Plaintiff from time to time issues advertising matter in connection with its business; and among such advertising matter issued by plaintiff are Exhibits——

(Objected to by the plaintiff as immaterial and irrelevant, the same objection applying also to each exhibit, respectively.)

21. In the collection of stamp taxes under Title XI of the revenue act of 1918, the Treasury Department ruled that the tax imposed under Schedule A thereof on indemnity and surety bonds, "and on all policies of guaranty and fidelity insurance, including policies guaranteeing titles to real estate and mortgage guarantee policies," should be computed, in the case of instruments issued in the form of Exhibit T and Exhibit U, at the rate of one cent on each dollar or fractional part of the aggregate so-called premiums receivable thereunder, whether then or subsequently collected or not; and the plaintiff and other companies engaged in similar business duly
31 paid such stamp taxes on that basis in accordance with such rule. The plaintiff paid such stamp taxes without protest and has never filed any claim for the refund thereof.

(Objected to by the defendant as immaterial and irrelevant.)

22. Commencing with the year 1921 there has been a marked increase in building activity in New York City and a corresponding increase in the demand for mortgage loans, especially building loans.

23. Since April, 1922, the plaintiff has owned and occupied a building at No. 56 Nassau Street, New York, N. Y., as its principal office, in which there are stores for rent. Plaintiff has received rentals from such stores and at times has received rentals for surplus space in some of its branch offices. Apart from such rentals and other incidental amounts, the plaintiff's income consists of the income from its investments, its extension and lending fees, and the so-called premium described above. All the plaintiff's income and its expenses and other information regarding its business are set forth in its annual reports to the superintendent of insurance of the State of New York. It is agreed that the court may take judicial notice of the published annual reports of the said superintendent.

24. At none of the times material to this action were the plaintiff's assets segregated or earmarked in any way for investment purposes or otherwise, all of its assets and all of its capital, surplus and undivided profits being employed indiscriminately in its business activi-
ties, except that the plaintiff has always maintained a guaranty
32 fund pursuant to the supposed requirements of Article V of the New York insurance law. That law required corporations organized thereunder to maintain a certain guaranty fund in specified classes of investments. All of the bonds and mortgages obtained by the plaintiff in the manner hereinbefore described were legal investments for such fund; and plaintiff's investments of the classes required for said fund always exceeded the amount required by the statute. But no investments were segregated or earmarked by the

plaintiff as being a part of a guaranty fund, the plaintiff always having on hand a sufficient amount of such investments to satisfy said requirements.

New York, January 17, 1929.

SHEARMAN & STERLING,
Attorneys for Plaintiff.
CHARLES H. TUTTLE,
United States Attorney,
Attorney for Defendant,
By S. C. COLEMAN,
Assistant U. S. Attorney.

33 In United States District Court, Southern District of New York

L. 36/348

LAWYERS MORTGAGE COMPANY

against

FRANK K. BOWERS, COLLECTOR OF INTERNAL REVENUE

Action at law to recover capital stock taxes paid for two fiscal years beginning July 1, 1922. Trial without a jury upon a stipulation of facts.

Messrs. Shearman & Sterling (Harry W. Forbes, of counsel) attorneys for plaintiff; Charles H. Tuttle, Esq., U. S. attorney (Samuel C. Coleman, assistant U. S. attorney, of counsel), for the collector.

Memorandum opinion

COLEMAN, D. J.:

The only question presented is whether plaintiff was an "insurance company" within the meaning of the revenue act of 1921, section 1000. It voluntarily paid a capital stock tax for each of the fiscal years in question, and now seeks a refund on the ground that it was an "insurance company" and therefore expressly exempt under the statute in force at the time. Concededly it did some pure in-

34 surance business, and a large amount that was not insurance.

The statute does not define an "insurance company," and the question is whether the nature of plaintiff's business and its status under the state laws put it in that class.

Plaintiff was incorporated in 1893, under the insurance law of New York, with the title Lawyers Mortgage Insurance Company, which was later changed to Lawyers Mortgage Company without, apparently, any change in the nature of its business. It has ever since been subject to the insurance department of the State, comply-

ing with the latter's requirements in reference to reports, investments, etc. Most of the business which plaintiff has been doing would have been perfectly lawful if the company had been incorporated under the banking law of New York and subject to that department rather than the insurance department; but a small part, being pure insurance business, would have been unlawful.

The business principally consists of lending money on bonds and mortgages and then selling them (or participation in them), together with so-called policies of mortgage guaranty. The bonds and mortgages which plaintiff receives on its loans it sells at their face amount, either outright or through participation certificates. It thus makes no direct profit on the sales, but each purchaser is required to appoint the plaintiff his attorney in fact to collect the interest and principal, and to agree that plaintiff may retain a certain part of the interest collected in payment of the "premium" for the "policy" of mortgage guaranty.

There are only two sources of substantial profit to the plaintiff in the business above outlined; (1) In making the loans plain-
35 tiff charges the borrower a lending fee; and (2) in selling the mortgages or participation certificates plaintiff receives a "premium" on its "policies" guaranty. The lending fee covers the cost of an appraisal of the property in which the loan is made, but includes also a profit. Of course, plaintiff also receives *in-* interest on the bonds and mortgages before they are sold to investors, but they are sold as quickly as possible except for the amount of the guaranty fund required by the insurance law.

In the course of the transactions above outlined, which constitute the bulk of plaintiff's business, the only part that has any of the features of insurance is the guaranty given when the bonds and mortages are sold, and defendant contends that even this is not insurance. The guaranty is embodied in a separate document entitled "policy of mortgage guaranty" and in the community generally is known as "policy." The consideration for it is expressed in the policy and is known in the community as a "premium," being the portion of the interest on the bond and mortgage retained by the plaintiff. The guaranty is of payment of both principal and interest.

All of that business, including the guaranty, could be done by a corporation organized under the banking law of New York and subject only to that department and not the insurance department. In fact there are two corporations so organized doing substantially the same kind of business, though there are many more under the insurance law.

Defendant urges that the giving of the guaranty is not insurance,
because plaintiff as the owner of the bond and mortgage
36 merely adds the guaranty as an incident of the sale. It should be noted, however, that there is a specific consideration paid by the purchaser for the guaranty, and the latter is embodied in

the form of a policy. The relations of the parties when the guaranty becomes effective are exactly the same as though plaintiff had never owned the bond and mortgage, and defendant concedes that in the latter case the giving of it would be an act of insurance. Plaintiff's ownership of the bonds and mortgages has an important bearing on the question whether it is an "insurance company" or merely an investment company that does some insurance; but I do not see how it prevents the guaranty from being insurance if it would otherwise be so, as defendant concedes.

In addition to the above business, plaintiff does a small amount of what defendant concedes to be insurance, in that it guarantees mortages which it has never owned and embodies the guaranty in policies for which stipulated fees are paid. This portion of the business would be unlawful if plaintiff were incorporated under any other than the insurance law.

Assuming that the insurance of all of plaintiff's policies is insurance business, the more difficult question remains whether it is an "insurance company" or merely a company that does some insurance. The proportion which its insurance business bore to the rest may be seen from the gross income for two years as follows:

	Lending fees (including extension fees)	Premiums	Interest
Year 1922	$869,587.36	$619,986.38	$372,795.12
Year 1923	106,460.09	750,805.21	426,841.31

37. It thus appears that a very substantial part of plaintiff's business is insurance, and a small part of it could not be done if the plaintiff were not organized under the insurance law. I do not think it can be said that either the insurance business or the noninsurance business is incidental to the other. Both are sources of substantial income and are direct objectives coordinate in plaintiff's plan.

In the past both the plaintiff and the Government have taken positions inconsistent with their present contentions, but I do not think that throws much light on the question to be decided. Furthermore, I do not see much significance in the fact that plaintiff advertised the noninsurance part of its business in a way that gave no indication that it was an insurance company.

In this situation of doubt, where from the nature of its business it might be classed either as an insurance company or otherwise, I think its status under the New York laws is determinative. Certainly the State authorities recognize it as an insurance company. It was so incorporated and has always been so treated by the insurance department. In a somewhat similar case, United States v. Cam-

bridge Loan & Building Co., the Supreme Court held that the State law was controlling.

To disregard its status under the laws of New York and to consider only the nature of the business done would give rise to great uncertainty and variation in its classification. A corporation could not be disqualified from being classed as an insurance company merely because it did some other business, whether incidental or independent. But what proportion between the two kinds
38 of business would be fixed as determinative? Furthermore, a company might with only slight fluctuations in the various departments of its business vary from year to year in its classification. The whole scheme of the Federal taxation is inconsistent with that situation.

I therefore direct judgment for the plaintiff. The findings will, of course, be the same as the stipulation of facts.

Dated August 2, 1929.

FRANK J. COLEMAN,
U. S. District Judge.

39 In United States District Court

[Title omitted.]

Plaintiff's findings of fact and conclusions of law

The issues of fact having duly come on to be tried by the court at a civil jury term of this court, held by the undersigned without a jury on January 29, 1929, and the allegations and proofs of the parties having been fully heard,

Now upon hearing Harry W. Forbes, of counsel for the plaintiff, and Samuel C. Coleman, assistant U. S. attorney, of counsel for the defendant, and due deliberation having been had, I decide and find as follows:

FINDINGS OF FACT

1. Plaintiff is a corporation duly incorporated as the Lawyers Mortgage Insurance Company on or about February 9, 1893, under Article V of the insurance law of the State of New York
40 (Laws of 1893, chapter 690) pertaining to title and credit guaranty corporations, its charter or certificate of incorporation having been duly filed on said date in the office of the superintendent of insurance of the State of New York.

A true and correct copy of said charter or certificate of incorporation is attached to the stipulation of facts herein as Exhibit A.

2. By an order of the Supreme Court of the State of New York, entered October 3, 1903, the name of the plaintiff was duly changed to Lawyers Mortgage Company.

3. On or about January 10, 1905, the plaintiff duly amended the statement of its purposes as contained in its original certificate of incorporation, and filed in the office of the superintendent of insur-

ance of said State of New York an amended certificate, a copy of which is attached to the stipulation of facts herein as Exhibit B.

4. On or about December 18, 1913, plaintiff's certificate of incorporation with the consent of said superintendent of insurance was further duly amended so as to include in the statement of the purposes and powers of the company all the powers which might be included in the certificate of incorporation of a title guaranty corporation organized under Article V, section 170, paragraph 1, of the insurance law, as amended by chapter 215 of the Laws of 1913.

A true and correct copy of said amended certificate of incorporation is attached to the stipulation of facts herein as Exhibit C.

41 5. Plaintiff since the date of its incorporation has always been, and now is, subject to examination by, and supervision of, the superintendent of insurance of the State of New York and is, and has been, subject to all the provisions of the insurance law of the State of New York applicable to so-called title and credit guaranty corporations organized thereunder, and is, and has been, required to file, and has filed, annually with the said superintendent of insurance on forms approved by him statements of its condition as of December 31 of each year.

True and correct copies of plaintiff's annual statements for the calendar years ending December 31, 1921, and December 31, 1922, are attached to the stipulation of facts herein as Exhibits D and E, respectively.

6. Plaintiff each year publishes for the information of its stockholders annual reports showing the condition of the company, its assets and liabilities, earnings and surplus, for the preceding year, including the annual reports for the calendar year of 1921 and 1922.

Copies of plaintiff's annual reports for the calendar years 1921 and 1922 are attached to the stipulation of facts herein as Exhibits F and G, respectively.

7. A copy of plantiff's by-laws, in effect during the calendar years 1921 and 1922, is attached to the stipulation of facts herein as Exhibit H.

8. On or about July 29, 1922, plaintiff voluntarily, but, as
41 plaintiff now claims, erroneously filed with defendant a capital-stock tax return for the period from July 1, 1922, to June 30, 1923, inclusive, and on or about November 3, 1922, paid to the defendant $10,147, the amount of the alleged capital-stock tax shown on the said return.

A true and correct copy of the said return is attached to the stipulation of facts herein as Exhibit I.

9. Thereafter, on or about November 14, 1923, plaintiff filed with the defendant a claim for a refund of the said sum of $10,147, which claim was thereafter duly rejected.

A true and correct copy of the said claim for refund is attached to the stipulation of facts herein as Exhibit J.

10. On or about July 27, 1923, plaintiff voluntarily, but, as plaintiff now claims, erroneously filed with defendant a capital-stock tax return for the period from July 1, 1923, to June 30, 1924, inclusive, and on or about September 4, 1923, paid to the defendant $10,731, the amount of the alleged capital-stock tax shown on the said return.

A true and correct copy of the said return is attached to the stipulation of facts herein as Exhibit K.

11. On or about November 14, 1923, plaintiff filed with the defendant a claim for refund of the said sum of $10,731, which claim was thereafter duly rejected.

A true and correct copy of the said claim for refund is attached to the stipulation of facts herein as Exhibit L.

43 12. On or about August 20, 1925, the said claims for refund (Exhibit J and Exhibit L) were denied by a letter dated August 20, 1925, a copy of which is attached to the stipulation of facts herein as Exhibit M.

13. On or about March 15, 1922, plaintiff filed with the defendant a consolidated income-tax return for itself and its subsidiary companies, the Nassau-Maiden Lane Loan Building Corporation, Liberty Brokerage Company, and Elemco Realty Company, Inc., for the calendar year 1921, including therein as taxable income its lending and extension fees, as well as its other taxable income, and thereafter paid to the defendant the amount of the alleged income taxes shown thereon.

A true and correct copy of the said return is attached to the stipulation of facts herein as Exhibit N.

14. On or about March 14, 1923, plaintiff filed with defendant a consolidated income-tax return for itself and its subsidiary companies, the Nassau-Maiden Lane Loan Building Corporation, Liberty Brokerage Company, and Elemco Realty Company, Inc., for the calendar year 1922, including therein as taxable income its lending and extension fees, as well as its other taxable income, and thereafter paid to the defendant the amount of the alleged income taxes shown thereon.

A true and correct copy of the said return is attached to the stipulation of facts herein as Exhibit O.

44 15. On or about March 15, 1924, plaintiff filed with the defendant a consolidated income-tax return for itself and its subsidiary companies, the Nassau-Maiden Lane Loan Building Corporation, Liberty Brokerage Company, and Elemco Realty Company, Inc., for the year 1923, including therein as taxable income its lending and extension fees, as well as its other taxable income, and thereafter paid the amount of the alleged income taxes shown thereon.

A true and correct copy of the said return is attached to the stipulation of facts herein as Exhibit P.

16. Plaintiff has never engaged in the business of insuring titles to real estate, nor has it ever issued policies of title insurance, although authorized by its charter so to do. The business of the

plaintiff, and the manner of conducting it, is, and was, at all the times material to this action, substantially as follows:

(a) Plaintiff receives applications for loans on real-estate security in New York City and vicinity. Where an application is for a loan on improved property, the plaintiff causes its appraisers to determine whether, in their opinion, the value of the property is sufficient to justify the loan applied for. Where the application is for a loan on property on which a building is to be erected (commonly called a "building loan"), the plaintiff causes its appraisers to determine from an examination of the plans and specifications submitted
45 and from an investigation of the financial responsibility of the applicant whether, in their opinion, the proposed loan is a desirable one for the plaintiff to make. If the report of the appraisers is favorable, the prospective borrower usually signs a formal contract for the loan upon one of the plaintiff's regular forms, a copy of which is attached to the stipulation of facts herein as Exhibit Q. If the loan is a building loan, the borrower subsequently signs a formal building loan contract on one of the plaintiff's forms therefor, a copy of which is attached to the stipulation of facts herein as Exhibit R, setting forth the terms and conditions upon which the loan will be advanced to the borrower. A copy of the formal contract (Exhibit Q) is at once turned over to a title insurance company, which issues its report on the condition of the title and furnishes a survey, and after the closing of the loan, delivers its policy of title insurance.

Upon closing a loan on improved property, the borrower executes a bond and first mortgage on the premises to the plaintiff in the customary form, a specimen of the printed form supplied by the plaintiff and frequently used being attached to the stipulation of facts herein as Exhibit S, or causes an existing bond and mortgage to be duly assigned to the plaintiff; and the plaintiff pays to the borrower the face amount of the principal of the loan, less the charges of the title insurance company for title insurance and survey, necessary disbursements for drawing and recording
46 papers, and the mortgage recording tax (so far as such charges have not already been paid or taken care of by the borrower) and less a lending fee, at the prevailing rates, which includes its appraisal charges; and such lending fees constitute a part of the gross income of the plaintiff. In the case of a building loan, the borrower upon closing executes a bond and first mortgage to the plaintiff and the plaintiff makes advances to the borrower and lending fee being handled in the same way as in the case of loan on improved property."

(b) The plaintiff receives from investors and other requests to purchase from plaintiff mortgage loans, or participations therein, the payment of which is to be insured or guaranteed by plaintiff in the manner hereinafter described, and also frequently invites, and especially during the years 1921–24, inclusive, did invite, offers

to purchase said bonds and mortgages or participations therein. Where the plaintiff holds a mortgage loan satisfactory to the applicant, the procedure transferring the same to the applicant is in one of the following ways:

(1) The bond and mortgage is sold as a whole and assigned to a purchaser at its face value. As part of the transaction the company delivers to the purchaser its so-called policy of mortgage guaranty, a specimen copy of which is attached to the stipulation of facts herein as Exhibit T. This instrument, Exhibit T, recites
47 the name of the assignee; and in paragraph marked "First" thereof is inserted the rate of interest, which is ordinarily one-half of one per centum less than the rate of interest specified in the bond and mortgage itself and the rate specified in Exhibit T (usually one-half of 1 per centum as aforesaid) is, when collected, retained by the plaintiff in accordance with the terms of Exhibit T. Such difference is designated a premium in the exhibits attached to the stipulation of facts herein and in business usage is called a premium.

(2) The procedure in paragraph (1) above is followed where there is a complete assignment of the bond and mortgage to a single purchaser. The plaintiff also assigns to purchasers fractional interests or participations in bonds and mortgages, especially those for large amounts. For that purpose the plaintiff issues to such holders its so-called "guaranteed first-mortgage certificate," a specimen copy of which is attached to the stipulation of facts herein as Exhibit U. For example, where the original bond and mortgage was for $100,000, with interest at six per cent per annum, and the investor paid to the plaintiff $10,000 for a participation therein, Exhibit U would recite the receipt of $10,000, the assignment of an undivided interest to the extent of $10,000 in the bond and mortgage of $100,000, and the guarantee by the plaintiff of
48 the payment of the holder of interest at the rate of five and one-half per cent per annum and of the principal in full. This difference (usually one-half of one per cent) between the rate of interest specified in the bond and mortgage and the rate of interest specified in the participation certificate is retained by the plaintiff, when collected, in accordance with the terms of Exhibit U. Such difference is designated a premium in the exhibits attached to the stipulation of facts herein and in business usage is called a premium.

(c) Plaintiff also receives from owners of outstanding bonds and mortgages applications to insure or guarantee in the manner herein described the payment of such bonds and mortgages, as evidenced by its so-called policy, Exhibit T; and in some cases a lender, about to make a mortgage loan, makes it a condition that the plaintiff shall guarantee the payment of the mortgage in which case the application for the so-called policy is submitted by the prospective borrower. In both such cases the plaintiff, if it accepts such applica-

tion, issues an instrument in the form of Exhibit T for the principal sum of the bond and mortgage, guaranteeing the payment of interest at one-half of one per centum less than the rate specified in the bond and mortgage itself. Such difference between the rate specified in the bond and mortgage itself and the rate specified in Exhibit
49 T is, when collected, retained by plaintiff in accordance with the terms of Exhibit T. Such difference is designated a premium in the exhibits hereto attached and in business usage is called a premium. Before issuing its so-called policy, Exhibit T, the plaintiff causes the customary search and survey to be made, the expense of which is paid by the applicant for the loan. Its business done in this manner, while stubstantial in amount, constitutes only a small percentage of the total business of the plaintiff.

(d) In occasional cases there are investors who desire to take mortgage loans, or participations therein, before such loans are closed. In such cases such investors pay to the plaintiff in advance the amount they wish to invest; and the plaintiff upon closing the desired loan, and making the actual advance to the borrower, assigns the bond and mortgage to the investor and delivers to him its so-called policy, Exhibit T, or delivers its guaranteed mortgage certificates, Exhibit U, such transactions being in all other respects similar in detail to those above described.

17. The primary purpose of the plaintiff in making loans on bonds and mortgages is not for investment but for the ultimate sales of the bonds and mortgages, either by way of complete assignments of bond and mortgage or by way of its guaranteed mortgage certificates, the proceeds from such sales being returned into the general funds of the plaintiff, from which investments and
50 reinvestments in similar transactions are made in the ordinary course of plaintiff's business. In assigning a bond and mortgage, the plaintiff always enters into the agreement evidenced by Exhibit T; and the assignment of fractional interest is always evidenced by Exhibit U. In neither case does the plaintiff make any profit by selling a bond and mortgage, or a fractional interest therein, at more than its face value or more than the amount advanced by the plaintiff thereon, including therein the charges and fees above described.

18. As stated above, the plaintiff in making mortgage loans customarily charges the borrower a fee for its services, known as a lending fee. If, when the mortgage falls due, the borrower desires to extend the time of payment, and the plaintiff is willing to grant such extension, the plaintiff customarily charges the borrower an extension fee, which includes its appraisal services. Such extension fees constitute a part of the gross income of the plaintiff.

Such original loans, and such extensions, are usually for a term of five years, though in the case of small loans the term is frequently three years.

Such lending fees and extension fees charged by the plaintiff are at the prevailing rates charged by lenders, whether individuals, partnerships, or corporations under whatever law of the State of New York incorporated, for mortgage loans and extensions in the city of New York, where the plaintiff's business is conducted, the rates for building loans being higher than for loans on improved property, since the lender must examine plans and must keep in
51 constant touch with the building operations in order to see that the plans are complied with and to determine when the advances become due.

The plaintiff's lending, extension fees, so-called premiums, and interest earned on bonds and mortgages held by the plaintiff (computed on the accrual basis) were for the years 1922, 1923, and 1924, respectively, as follows:

	Landing fees	Extension fees	Premiums	Interest
Year 1922	$655, 283. 70	$214, 303. 56	$619, 986. 38	$372, 795. 12
Year 1923	990, 855. 37	73, 745. 71	750, 803. 21	426, 842. 31
Year 1924				

19. All other corporations incorporated under the provisions of Article V of the insurance law of the State of New York which engage in guaranteeing mortgages follow the same general method of doing business as the plaintiff, with the exception of corporations affiliated with some title or trust company which do business only with such affiliated companies and not with the general public. At least two corporations incorporated under the banking law of the State of New York make mortgage loans and sell bonds and mortgages and participations therein, with their guaranty, in New York City, as their principal business, under the same general method of doing business as the plaintiff, making such reports to the State banking department as are required by the provisions of the banking law.

20. Plaintiff from time to time issues advertising matter in
52 connection with its business, and among such advertising matter issued by plaintiff were the extracts shown in Exhibit V, referred to in the stipulation of facts herein.

21. In the collection of stamp taxes under Title XI of the revenue act of 1918 the Treasury Department ruled that the tax imposed under Schedule A thereof on indemnity and surety bonds, "and on all policies of guaranty and fidelity insurance, including policies guaranteeing titles to real estate and mortgage guarantee policies," should be computed, in the case of instruments issued in the form of Exhibit T and Exhibit U, at the rate of one cent on each dollar or fractional part of the aggregate so-called premiums receivable thereunder, whether then or subsequently collected or not; and the plaintiff and other companies engaged in similar business duly paid such stamp taxes on that basis in accordance with such rule. The plain-

tiff paid such stamp taxes without protest and has never filed any claim for the refund thereof.

22. Commencing with the year 1921, there has been a marked increase in building activity in New York City and a corresponding increase in the demand for mortgage loans, especially building loans.

23. Since April, 1922, the plaintiff has owned and occupied a building at No. 56 Nassau Street, New York, N. Y., as its principal office, in which there are stores for rent. Plaintiff has received
53 rentals from such stores and at times has received rentals for surplus space in some of its branch offices. Apart from such rentals and other incidental amounts, the plaintiff's income consists of the income from its investments, its extension and lending fees, and the so-called premiums described above. All the plaintiff's income and its expenses and other information regarding its business are set forth in its annual reports to the superintendent of insurance of the State of New York. It is agreed that the court may take judicial notice of the published annual reports of the said superintendent.

24. At none of the times material to this action were the plaintiff's assets segregated or earmarked in any way for investment purposes or otherwise, all of its assets and all of its capital, surplus, and undivided profits being employed indiscriminately in its business activities, except that the plaintiff has always maintained a guaranty fund pursuant to the supposed requirements of Article V of the New York insurance law. That law required corporations organized thereunder to maintain a certain guaranty fund in specified classes of investments. All of the bonds and mortgages obtained by the plaintiff in the manner hereinbefore described were legal investments for such fund; and plaintiff's investments of the classes required for said fund always exceeded the amount required by the statute. But no investments were segregated or earmarked by the plaintiff as being a part of a guaranty fund, the plaintiff always having on hand a sufficient amount of such investments to satisfy said requirements.

54 CONCLUSIONS OF LAW

1. At all the times material to this action the plaintiff was an insurance company, within the meaning of sections 246, 247, and 1000 of the revenue act of 1921, and accordingly was not subject to the capital-stock tax imposed by section 1000 of the said act.

2. The plaintiff is entitled to recover from the defendant the said sums of $10,147, paid by it to the defendant on July 29, 1922, and $10,731, paid by it to the defendant on August 31, 1923, with interest.

I accordingly direct judgment for the plaintiff, Lawyers Mortgage Company, against the defendant, Frank K. Bowers, collector of internal revenue, for the sum of $20,878, with interest on the sum of

$10,147 from July 29, 1922, and with interest on the sum of $10,781 from August 31, 1923, together with the costs and disbursements of this action, which are hereby awarded to the plaintiff, the same to be taxed.

FRANK J. COLEMAN, *U. S. D. J.*

In United States District Court

[Title omitted.]

55 *Defendant's findings of fact and conclusions of law*

The issues of fact having duly come on to be tried by the court at a term held for the trial of civil causes of law before the undersigned without a jury on January 29, 1929, counsel for both parties by stipulation having waived a trial by jury, and the allegations and proofs of the parties having fully been heard,

Now upon hearing Harry W. Forbes, of counsel for the plaintiff, and Samuel C. Coleman, assistant United States attorney, of counsel for the defendant, and due deliberation having been had, I decide and find as follows:

FINDINGS OF FACT

1. Plaintiff is a corporation duly incorporated as the Lawyers Mortgage Insurance Company on or about February 9, 1893,
56 under Article V of the insurance law of the State of New York (Laws of 1893, chapter 690) pertaining to title and credit guaranty corporations, its charter or certificate of incorporation having been duly filed on said date in the office of the superintendent of insurance of the State of New York.

A true and correct copy of said charter or certificate of incorporation is attached to the stipulation of facts herein as Exhibit A.

2. By an order of the Supreme Court of the State of New York, entered October 3, 1903, the name of the plaintiff was duly changed to Lawyers Mortgage Company.

3. On or about January 10, 1905, the plaintiff duly amended the statement of its purposes as contained in its original certificate of incorporation, and filed in the office of the superintendent of insurance of said State of New York as amended certificate, a copy of which is attached to the stipulation of facts herein as Exhibit B.

4. On or about December 18, 1913, plaintiff's certificate of incorporation with the consent of said superintendent of insurance was further duly amended so as to include in the statement of the purposes and powers of the company all the powers which might be included in the certificate of incorporation of a title guaranty corporation organized under Article V, section 170, paragraph 1, of the insurance law, as amended by chapter 215 of the Laws of 1913.

A true and correct copy of said amended certificate of incorporation is attached to the stipulation of facts herein as Exhibit C.

57 5. Plaintiff since the date of its incorporation has always been, and now is, subject to examination by, and supervision of, the superintendent of insurance of the State of New York and is, and has been, subject to all the provisions of the insurance law of the State of New York applicable to so-called title and credit-guaranty corporations organized thereunder and is, and has been, required to file, and has filed, annually with the said superintendent of insurance on forms approved by him statements of its condition as of December 31 of each year.

True and correct copies of plaintiff's annual statements for the calendar years ending December 31, 1921, and for December 31, 1922, are attached to the stipulation of facts herein as Exhibits D and E, respectively.

6. Plaintiff each year publishes for the information of its stockholders annual reports showing the condition of the company, its assets and liabilities, earnings and surplus, for the preceding year, including the annual reports for the calendar year of 1921 and 1922.

Copies of plaintiff's annual reports for the calendar years 1921 and 1922 are attached to the stipulation of facts herein as Exhibits F and G, respectively.

7. A copy of plaintiff's by-laws, in effect during the calendar years 1921 and 1922, is attached to the stipulation of facts herein as Exhibit H.

58 8. On or about July 29, 1922, plaintiff voluntarily but, as plaintiff now claims, erroneously filed with defendant a capital-stock tax return for the period from July 1, 1922, to June 30, 1923, inclusive, and on or about November 3, 1922, paid to the defendant $10,147, the amount of the alleged capital-stock tax shown on the said return.

A true and correct copy of the said return is attached to the stipulation of facts herein as Exhibit I.

9. Thereafter, on or about November 14, 1923, plaintiff filed with the defendant a claim for the refund of the said sum of $10,147, which claim was thereafter duly rejected.

A true and correct copy of the said claim for refund is attached to the stipulation of facts herein as Exhibit J.

10. On or about July 27, 1923, plaintiff voluntarily, but as plaintiff now claims, erroneously filed with defendant a capital-stock tax return for the period from July 1, 1923, to June 30, 1924, inclusive, and on or about September 4, 1923, paid to the defendant $10,731, the amount of the alleged capital-stock tax shown on the said return.

A true and correct copy of the said return is attached to the stipulation of facts herein as Exhibit K.

11. On or about November 14, 1923, plaintiff filed with the defendant a claim for refund of the said sum of $10,731, which claim was thereafter duly rejected.

A true and correct copy of the said claim for refund is attached to the stipulation of facts herein as Exhibit L.

59 12. On or about August 20, 1925, the said claim for refund (Exhibit J and Exhibit L) were denied by a letter dated August 20, 1925, a copy of which is attached to the stipulation of facts herein as Exhibit M.

13. On or about March 15, 1922, plaintiff filed with the defendant a consolidatd income-tax return for itself and its subsidiary companies, the Nassau-Maiden Lane Loan Building Corporation, Liberty Brokerage Company, and Elemco Realty Company, Inc., for the calendar year 1921, including therein as taxable income its lending and extension fees, as well as its other taxable income, and thereafter paid to the defendant the amount of the alleged income taxes shown thereon.

A true and correct copy of the said return is attached to the stipulation of facts herein as Exhibit N.

14. On or about March 14, 1923, plaintiff filed with defendant a consolidated income-tax return for itself and its subsidiary companies, the Nassau-Maiden Lane Loan Building Corporation, Liberty Brokerage Company, and Elemco Realty Company, Inc., for the calendar year 1922, including therein as taxable income its lending and extension fees, as well as its other taxable income, and thereafter paid to the defendant the amount of the alleged income taxes shown thereon.

A true and correct copy of the said return is attached to the stipulation of facts herein as Exhibit O.

15. On or about March 15, 1924, plaintiff filed with the
60 defendant a consolidated income-tax return for itself and its subsidiary companies, the Nassau-Maiden Lane Loan Building Corporation, Liberty Brokerage Company, and Elemco Realty Company, Inc., for the year 1923, including therein as taxable income its lending and extension fees, as well as its other taxable income, and thereafter paid the amount of the alleged income taxes shown thereon.

A true and correct copy of the said return is attached to the stipulation of facts herein as Exhibit P.

16. Plaintiff has never engaged in the business of insuring titles to real estate, nor has it ever issued policies of title insurance, although authorized by its charter so to do. The business of the plaintiff, and the manner of conducting it is, and was, at all the times material to this action, substantially as follows:

(a) Plaintiff receives applications for loans on real-estate security in New York City and vicinity. Where an application is for a loan on improved property, the plaintiff causes its appraisers to determine whether, in their opinion, the value of the property is sufficient to justify the loan applied for. Where the application is for a loan on property on which a building is to be erected, (commonly called a "building loan"), the plaintiff causes its appraisers to determine from an examination of the plans and specifications submitted and from an investigation of the financial

responsibility of the applicant whether, in their opinion, the
61 proposed loan is a desirable one for the plaintiff to make.
If the report of the appraisers is favorable the prospective
borrower usually signs a formal contract for the loan upon one of
the plaintiff's regular forms, a copy of which is attached to the
stipulation of facts herein as Exhibit Q. If the loan is a building
loan, the borrower subsequently signs a formal building loan con-
tract on one of the plaintiff's forms therefor, a copy of which is
attached to the stipulation of facts herein as Exhibit R, setting forth
the terms and conditions upon which the loan will be advanced to the
borrower. A copy of the formal contract (Exhibit Q) is at once
turned over to a title insurance company, which issues its report on
the condition of the title and furnishes a survey, and after the closing
of the loan, delivers its policy of title insurance.

Upon closing a loan on improved property, the borrower executes
a bond and first mortgage on the premises to the plaintiff in the
customary form, a specimen of the printed form, supplied by the
plaintiff and frequently used being attached to the stipulation of
facts herein as Exhibit S, or causes an existing bond and mortgage
to be duly assigned to the plaintiff; and the plaintiff pays to the
borrower the face amount of the principal of the loan, less the
charges of the title insurance company for title insurance and sur-
vey, necessary disbursements for drawing and recording papers, and
the mortgage recording tax (so far as such charges have not already
been paid or taken care of by the borrower) and less a lending
2 fee, at the prevailing rates, which includes its appraisal
charges; and such lending fees constitute a part of the gross
income of the plaintiff. In the case of a building loan, the borrower
upon closing executes a bond and first mortgage to the plaintiff and
the plaintiff makes advances to the borrower in accordance with the
terms of the contract, the charges and lending fee being handled
in the same way as in the case of a loan on improved property.

(b) The plaintiff receives from investors and others requests to
purchase from plaintiff mortgage loans, or participations therein,
the payment of which is to be insured or guaranteed by plaintiff
in the manner hereinafter described, and also frequently invites, and
especially during the years 1921–1924, inclusive, did invite, offers to
purchase said bonds and mortgages or participations therein.
Where the plaintiff holds a mortgage loan satisfactory to the ap-
plicant, the procedure transferring the same to the applicant is in
one of the following ways:

1. The bond and mortgage is sold as a whole and assigned to a
purchaser at its face value. As part of the transaction, the com-
pany delivers to the purchaser its so-called policy of mortgage guar-
anty, a specimen copy of which is attached to the stipulation of
facts herein as Exhibit T. This instrument, Exhibit T, recites the
name of the assignee, and in paragraph marked "First" thereof is

inserted the rate of interest, which is ordinarily one-half of
63 one percentum less than the rate of interest specified in the bond and mortgage itself, and the rate specified in Exhibit T (usually one-half of one percentum as aforesaid) is, when collected, retained by the plaintiff in accordance with the terms of Exhibit T. Such difference is designated a premium in the exhibits attached to the stipulation of facts herein.

(2) The procedure in paragraph (1) above is followed where there is a complete assignment of the bond and mortgage to a single purchaser. The plaintiff also assigns to purchasers fractional interests or participations in bonds and mortgages, especially those for large amounts. For that purpose the plaintiff issues to such holders its so-called "guaranteed first-mortgage certificate," a specimen copy of which is attached to the stipulation of facts herein as Exhibit U. For example, where the original bond and mortgage was for $100,000 with interest at six per cent per annum and the investor paid to the plaintiff $10,000 for a participation therein, Exhibit U would recite the receipt of $10,000, the assignment of an undivided interest to the extent of $10,000 in the bond and mortgage of $100,000 and the guarantee by the plaintiff of the payment to the holder of interest at the rate of five and one-half per cent per annum and of the principal in full. This difference (usually one-half of one per cent) between the rate of interest specified in the bond and mortgage
64 and the rate of interest specified in the participation certificate is retained by the plaintiff, when collected, in accordance with the terms of Exhibit U. Such difference is designated a premium in the exhibits attached to the stipulation of facts herein.

(c) Plaintiff also receives from owners of outstanding bonds and mortgages applications to insure or guarantee in the manner herein described the payment of such bonds and mortgages, as evidenced by its so-called policy, Exhibit T; and in some cases a lender, about to make a mortgage loan, makes it a condition that the plaintiff shall guarantee the payment of the mortgage in which case the application for the so-called policy is submitted by the prospective borrower. In both such cases the plaintiff, if it accepts such application, issues an instrument in the form of Exhibit T for the principal sum of the bond and mortgage, guaranteeing the payment of interest at one-half on one percentum less than the rate specified in the bond and mortgage itself. Such difference between the rate specified in the bond and mortgage itself and the rate specified in Exhibit T is when collected retained by plaintiff in accordance with the terms of Exhibit T. Such difference is designated a premium in the exhibits hereto attached. Before issuing its so-called policy, Exhibits T, the plaintiff causes the customary search and survey to be made, the expense of which is paid by the applicant for the loan. Its business done in this manner, while substantial in amount consti-
65 tutes only a small percentage of the total business of the plaintiff.

(d) In occasional cases there are investors who desire to take mortgage loans, or participations therein, before such loans are closed. In such cases such investors pay to the plaintiff in advance the amount they wish to invest; and the plaintiff upon closing the desired loan, and making the actual advance to the borrower, assigns the bond and mortgage to the investor and delivers to him its so-called policy, Exhibit T, or delivers its guaranteed mortgage certificate, Exhibit U, such transaction being in all other respects similar in detail to those above described.

17. The primary purpose of the plaintiff in making loans on bonds and mortgages is not for investment but for the ultimate sale of the bonds and mortgages, either by way of complete assignments of bond and mortgage or by way of its guaranteed mortgage certificates, the proceeds from such sales being returned into the general funds of the plaintiff, from which investments and reinvestments in similar transactions are made in the ordinary course of plaintiff's business. In assigning a bond and mortgage the plaintiff always enter into the agreement evidenced by Exhibit T, and the assignment of fractional interest in always evidenced by Exhibit U. In neither case does the plaintiff make any profit by selling a bond and mortgage, or a fractional interest therein, at more than its face value or more than the amount advanced by the plaintiff thereon, including therein the charges and fees above described.

66 18. As stated above, the plaintiff in making mortgage loans customarily charges the borrower a fee for its services, known as a lending fee. If, when the mortgage falls due, the borrower desires to extend the time of payment, and the plaintiff is willing to grant such extension, the plaintiff customarily charges the borrower an extension fee, which includes its appraisal services. Such extension fees constitute a part of the gross income of the plaintiff.

Such original loan, and such extensions, are usually for a term of five years, though in the case of small loans the term is frequently three years.

Such lending fees and extension fees charged by the plaintiff are at the prevailing rates charged by lenders, whether individual, partnerships, or corporations under whatever law of the State of New York incorporated, for mortgage loans and extensions in the city of New York, where the plaintiff's business is conducted, the rates for building loans being higher than for loans on improved property since the lender must examine plans and must keep in constant touch with the building operations in order to see that the plans are complied with and to determine when the advances become due.

The plaintiff's lending, extension fees, so-called premiums, and interest earned on bonds and mortgages held by the plaintiff (com-

puted on the accrual basis) were for the years 1922, 1923, and 1924, respectively, as follows:

	Lending fees	Extension fees	Premiums	Interest
Year 1922	$655, 283. 70	$214, 303. 56	$619, 986. 38	$372, 706. 12
Year 1923	990, 855. 37	73, 745. 71	750, 803. 21	426, 841. 31
Year 1924				

67 19. All other corporations incorporated under the provisions of Article V of the insurance law of the State of New York which engage in guaranteeing mortgages follow the same general method of doing business as the plaintiff, with the exception of corporations affiliated with some title or trust company which do business only with such affiliated companies and not with the general public. At least two corporations incorporated under the banking law of the State of New York make mortgage loans and sell bonds and mortgages and participations therein, with their guaranty, in New York City, as their principal business, under the same general method of doing business as the plaintiff, making such reports to the State banking department as are required by the provisions of the banking law.

20. Plaintiff from time to time issues advertising matter in connection with its business, and among such advertising matter issued by plaintiff were the extracts shown in Exhibit V, referred to in the stipulation of facts herein.

21. Commencing with the year 1921, there has been a marked increase in building activity in New York City and a corresponding increase in the demand for mortgage loans, especially building loans.

22. Since April, 1922, the plaintiff has owned and occupied a building at No. 56 Nassau Street, New York, N. Y., as its principal office, in which there are stores for rent. Plaintiff has received rentals from such stores and at times has received rentals for
68 surplus space in some of its branch offices. Apart from such rentals and other incidental amounts, the plaintiff's income consists of the income from its investments, its extension and lending fees, and the so-called premiums described above. All the plaintiff's income and its expenses and other information regarding its business are set forth in its annual reports to the superintendent of insurance of the State of New York. It is agreed that the court may take judicial notice of the published annual reports of the said superintendent.

23. At none of the times material to this action were the plaintiff's assets segregated or earmarked in any way for investment purposes or otherwise, all of its assets and all of its capital, surplus, and undivided profits being employed indiscriminately in its business activities, except that the plaintiff has always maintained a guaranty fund pursuant to the supposed requirements of Article V

of the New York insurance law. That law required corporations organized thereunder to maintain a certain guaranty fund in specified cases of investments. All of the bonds and mortgages obtained by the plaintiff in the manner hereinbefore described were legal investments for such fund; and plaintiff's investments of the classes required for said fund always exceeded the amount required by the statute. But no investments were segregated or earmarked by the plaintiff as being a part of a guaranty fund, the plaintiff always having on hand a sufficient amount of such investments to satisfy said requirements.

69 CONCLUSIONS OF LAW

1. At none of the times material to this action was the plaintiff an insurance company within the meaning of sections 246 and 247 of the revenue act of 1921.

2. The plaintiff is not an insurance company within the meaning of sections 246 and 247 of the revenue act of 1921.

3. The burden is upon the plaintiff to establish its exemption from the operation of section 1000 of the revenue act of 1921.

4. The plaintiff has failed to sustain the burden which is upon it to prove that it was exempt from the operation of section 1000 of the revenue act of 1921 during the years in question.

5. The plaintiff has failed to establish that it was exempt from the payment of the capital-stock tax during the years in question.

6. The taxes in question were legally assessed and lawfully collected.

7. If the plaintiff is not exempt from the operation of section 1000 of the revenue act of 1921, the amount paid by the plaintiff as taxes under that section were properly due the defendant, as collector.

8. The plaintiff has produced no evidence which warrants a judgment in its favor against the defendant.

70 9. Plaintiff has failed to establish that it issued policies of insurance in connection with any of its activities or that it charged a premium in connection with any of its activities.

10. The defendant is entitled to judgment in its favor dismissing the complaint upon the merits.

11. There should be a judgment in favor of the defendant.

I accordingly direct the entry of judgment in favor of the defendant against the plaintiff, adjudging that the complaint herein be dismissed upon the merits and that the defendant have his costs against the plaintiff as taxed, together with the disbursements of this action.

——— ———, *U. S. D. J.*

Refused
F. J. C.

71 In United States District Court

[Title omitted.]

Defendant's objections to findings

The defendant hereby objects to the proposed findings of fa numbered 16 (b1) in so far as it contains therein the clause " a in business usage is called a premium "; paragraph 16 (b2) in so f as it contains the clause " and in business usage is called a premium and to paragraph 16 (c) in so far as it contains the clause " and business usage is called a premium."

The defendant further objects to the conclusions of law propos by the plaintiff numbered 1 and 2.

CHARLES H. TUTTLE,
United States Attorney.

72 In United States District Court

[Title omitted.]

Defendant's exceptions to findings of fact and conclusions of law

1. The defendant hereby excepts to the finding of fact numbere 16 (b1) in so far as it contains therein the clause " and in busine usage is called a premium "; the defendant excepts to the findi of fact numbered paragraph 16 (b2) in so far as it contains t clause " and in business usage is called a premium "; and defenda further excepts to the finding of fact numbered paragraph 16 (in so far as it contains the clause " and in business usage is called premium."

2. The defendant further excepts to the court's refusal to find as finding of fact paragraph 16 of the defendant's proposed findings fact in the language therein contained.

3. The defendant excepts to the conclusions of law numbered o and two and excepts further to the direction of judgment in favor the plaintiff.

73 4. The defendant further excepts to the court's refusal make the following conclusions of law as proposed by t defendant:

Conclusions of law numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 1 respectively.

And further excepts to the court's refusal to grant the defendan motion for judgment dismissing the complaint and the court's r fusal to direct the entry of judgment in favor of the defendant.

Dated, New York, N. Y., October 22, 1929.

CHARLES H. TUTTLE,
United States Attorney for the
Southern District of New York,
Attorney for Defendant.

Office and P. O. address: U. S. Courts and Old P. O. Bldg., Broadway and Park Row, Borough of Manhattan, city of New York.

Order Settling Bill of Exceptions

Upon the annexed consent and on motion of Charles H. Tuttle, U. S. attorney for the Southern District of New York, I hereby sign, settle, and allow the foregoing, together with the exhibits offered in evidence, as and for the defendant's bill of exceptions and order the same to be filed.

Dated, New York, March 20, 1930.

FRANK J. COLEMAN, *U. S. D. J.*

74 We hereby consent to the settling, allowing, and filing of the within, together with the exhibits offered in evidence as and for the defendant's bill of exceptions.

Dated, New York, March 20, 1930.

SHEARMAN & STERLING,
Attorneys for Plaintiff.

75 *Exhibit M*

Address reply to Commissioner of Internal Revenue and refer to MT-CST-2NY-3172-GCD.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, August 20, 1925.

LAWYERS MORTGAGE COMPANY,
56 Nassau Street, New York, New York.

Claim	List	P.	L.	Amount
R24451	August, 1923	52	5	$10,731
R24598	September, 1922	257	4	10,147

GENTLEMEN: Your claims for the refunding of $10,147 and $10,731, capital-stock tax for the taxable periods ended June 30, 1923, and June 30, 1924, respectively, have been considered.

The company contends that it is an insurance company and therefore exempt from liability to capital-stock tax.

Section 1000 (a) of the revenue act of 1921, under which the capital-stock taxes in question were paid, required every domestic corporation to pay annually an excise tax with respect to carrying on or doing business. Subdivision (2) (b) of that section 76 provided that the taxes so imposed should not apply in any year to any insurance company. Section 246 (a) sets forth special provisions for computing the income tax of any insurance company.

The company declares that it was not only organized as a title-guaranty company, but actually carries on an insurance business as such. In support of that petition it points out that it maintains the guaranty fund required by the insurance laws of the State of New York, reports regularly to the superintendent of insurance of the State, and is classed as an insurance company by the State authorities. The company does not do any title insurance business but confines itself solely to the business of insuring the payment of mortgages, or "guaranteeing mortgages," as it is commonly called. In carrying on its business the company engages in many activities. It examines titles and passes on the same; lends money on real-estate security in the form of mortgages; assigns loans and mortgages to investors for a consideration; issues its guaranteed interest-bearing mortgage certificates in almost any amount desired; collects both principal and interest; and guarantees the payment of both principal and interest. It deals with lenders of money as well as borrowers thereof. In a comparatively few cases it makes loans on its own account, but mostly it handles funds for investors.

The income received by the company may be divided in four parts, viz:

(1). Premiums received for mortgage guaranties.
(2). Interest on mortgages and other securities.
77 (3) Fees for examining and passing upon titles.
(4) Amounts received for miscellaneous sources.

The following table show the gross sums received from each of those sources:

Year	1918	1919	1920	1921
Premiums	$658,699	$625,448	$618,713	$589,493
Interest	299,162	379,697	502,614	541,272
Fees	89,821	184,782	392,055	498,685
Misc.		21,484	70,594	3,318
Total	11,047,682	1,211,411	1,583,976	1,632,738

Year	1922	1923	1924
Premiums	$619,986	$750,803.21	$897,167.73
Interest	489,277	521,111.53	545,638.33
Fees	848,543	1,033,313.80	1,086,240.36
Misc.	22,292	51,843.32	45,188.77
Total	1,980,098	2,357,071.86	2,574,194.70

The company explains those figures by stating that premiums received from mortgage guaranties are well recognized sources of income of insurance companies; that as all insurance companies maintain investments the receipt of interest from securities is not inconsistent with its claim to belong to that class; that receipts from

fees are merely incidental to its principal insurance business; and that the miscellaneous receipts, consisting of rent from office buildings, profits on foreclosed real estate, etc., also constitute but incidental income.

As this company was organized under an insurance law of the State of New York and as it is required to make annual reports to the superintendent of insurance of that State, it is evident that
78 it carries on an insurance business. However, it also engages in activities which are not strictly insurance activities, from the exercise of which it receives a large income. So the question to be decided is whether the business as a whole that is carried on by the company is an insurance business.

An examination of the evidence presented shows conclusively that this company also engages in the investment business on a large scale. In an analysis of the entire business carried on by the company two publications recently issued by the company afford pertinent data. One is the annual report of the company, dated January 1, 1925, of which the following are pertinent extracts, viz:

"During the past year, the company's earnings were the largest in its history, the gross earnings being $2,574,195, and the net profits $1,501,208.

"The sales of guaranteed mortgages, including extensions, amounted to $74,088,503, and the net gain in outstanding guaranteed mortgages amounted to $38,973,825.

"Since the Lawyers Mortgage Company was organized it has guaranteed $838,121,541 of mortgages, of which $627,539,494 have been paid in full, leaving now outstanding $210,582,047.

"There has never been in the history of New York such a strong demand for guaranteed mortgages as at the present time, and the difficulty is to obtain sufficient good mortgages to meet the demand. Under the present conditions of rapid expansion of the city
79 of New York, the Lawyers Mortgage Company is more than ever cautious in making mortgage loans, scrutinizing with consent watchfulness the present character and future prospects of the various sections of the city. Due to the ease of financing new building construction with excessive bond issues, prices of land in some locations have risen to very high levels, which the company discounts, in the same way that it discounts the present high cost of building. This prudent course, added to our firm policy, requiring semiannual installments in reduction of the principal of mortgage loans covering new buildings, will protect the clients of this company against any future recessions in the value of New York City real estate.

"* * *

"The special attention of investors is called to our guaranteed first-mortgage certificates, of which the company now has over

$37,000,000 outstanding. These certificates are a legal investmen
for trust funds. They are, moreover, the most convenient and scien
tific development in the mortgage field, combining the maximum o
safety found in guaranteed mortgages and the greatest flexibilit
as to amount found in any prime investment. Any even or odd
amount from $100 to $1,000,000 may be fully invested in those guar
anteed first-mortgage certificates."

The other publication issued by the company is entitled "Ten
Radio Talks on Mortgage Investments." On the second page the
following statements are made, viz:

80 "The sole business of this company is to supply conserva
tive investors with first mortgages on Manhattan, Bronx
Brooklyn, Queens, Nassau, and Westchester real estate with prin
cipal and interest fully guaranteed by this company.

"* * *

"No loss to any investor in our 31 years of operation and we
guarantee there never shall be."

These printed "talks" are on such subjects as The Secret of
Financial Success; Three Rules for the Protection of the Investor
Origin and Development of the Real-Estate Mortgages; and Invest
ment Pitfalls. All these "talks" relate to investments and are
issued for the purpose of attracting investors. The importance of
the particular kind of investments handled by this company, guar
anteed mortgages, is especially emphasized.

This advertising matter thus establishes that this company is hold
ing itself out as one that handles attractive investments. That this
business is very considerable may be gathered from the table of gross
income set forth hereinbefore on page 3. It will be seen therefrom
that during the calendar years 1922, 1923, and 1924, the company's
gross income from premiums for guaranties, purely insurance busi
ness, was $619,986, $750,803.21, and 897,167.72, respectively. During
the same three years the company's income from loan fees, purely
investment business, was $848,543, $1,033,313.80, and $1,086,240.38
respectively. It will thus be seen that the income from the lat
ter source exceeded the income from the former source in a
81 marked degree. With regard to the income from interest on
mortgages and from miscellaneous sources, it is impossible to
classify it as pertaining either to the company's insurance business
or its investment business.

All these facts point to the conclusion that this company is engaged
chiefly in handling real-estate mortgage loans. Its name, the sources
of its income as indicated by the table referred to, its declared pur
pose to supply conservative investors with guaranteed mortgages
all these factors establish that the business carried on by the com
pany is primarily an investment business. It does no guaranty of

insurance business for others but confines its activities in this respect to its own investment securities. In order to make such guaranties, it is required by the laws of New York to incorporate under an insurance law, to report regularly to the insurance commissioner of the State, and to maintain a guaranty fund, as determinative of the business of the company as a whole. It is evident that the insurance functions are but secondary to importance to the activities of the organization. In other words, it insures the investment securities which it offers to the public. The insurance feature merely serves to make the investments more attractive.

This office is therefore of the opinion that your organization can not be classed as an insurance company, which conclusion has also been reached by the Income Tax Unit, and that it is liable to capital-stock tax.

The claims are accordingly rejected.

The records of this office show that the company did not
82 pay any capital-stock tax for the taxable period ended June 30, 1925. An examination of the balance sheet of the return shows the company reported a valuation of $11,389,092, based on the excess of assets over liabilities under Exhibit A. On this basis the fair value and tax due have been determined as follows:

Fair value	$11,389,092
Deduction	5,000
Fair value in excess of $5,000	11,384,092
Tax at $1 for each full $1,000	11,384

This assessment will be listed. Kindly await bill from the collector, to whom payment should be made. No remittance should be sent to Washington.

Respectfully,

D. H. BLAIR, *Commissioner.*

MW

Exhibit Q

No. ____

CONTRACT FOR LOAN AND TITLE INSURANCE

The Lawyers Mortgage Company having approved an application for a loan secured by a mortgage upon premises and terms set forth below, the undersigned applicant hereby agrees to take said
83 loan from Lawyers Mortgage Company or its assigns; to pay to Lawyers Mortgage Company upon the closing all its charges hereinafter specified and all expenses incurred by it and reasonably necessary in the completion of this transaction whether herein specified or not; to execute and deliver or cause to be executed

and delivered or assigned one or more bonds and mortgages in Lawyers Mortgage Company usual form sufficient to constitute or create a single first mortgage lien upon a good and marketable title in fee to said premises free from other and prior encumbrances and one which the title company below named is willing to insure without exception; to give satisfactory assurance or evidence of unconditional ownership of the fixtures installed on said premises; to promptly make known to said Lawyers Mortgage Company any further material facts, affecting the title to said premises that may come to the knowledge of said applicant. The applicant further represents that the statements herein are full and correct to the best of applicant's knowledge and belief and hereby requests and authorizes Lawyers Mortgage Company to employ _____ Company to search and insure the title to said premises and said mortgage and authorizes said title company to apply for certificates in all city departments.

The Lawyers Mortgage Company agrees to make the loan or procure it to be made upon the terms and conditions herein set forth provided the title be closed on or before _____, 19___, and in the case of a building loan, subject to approval of plans, specifications and financial statements of applicant, but reserves the
84 right to decline the loan for any reasonable objection to title, construction of the building, or occupancy not herein disclosed and in such event or in case of the failure of the applicant to take the loan as and when herein provided the applicant will nevertheless pay the charges and expenses as agreed.

Amount of loan, $_____

Rate, _____ % only _____ years.

(If a building loan, the building loan agreement is hereby made a part of this contract.)

Payment or privilege: _____

1. Bond of_____
2. Collateral bond of_____
3. Mortgage by_____
4. Present owner_____

Existing mortgages: Held by _____ to be paid.
" " _____ " " assigned.
Subordinated.

Papers to be obtained by borrower: Satisfaction, assignment, subordination agreement, waiver of liens on fixtures.

Papers to be drawn by _____: Bond, mortgage, extension agreement, release, ownership agreement, lienors' certificate, estoppel certificate, coordination agreement.

Title to be reported to Lawyers Mortgage Company, date _____

Title to close _____, at 56 Nassau Street; time, _____ M.

Premises, _____

Fee, _____

Survey: Order unless Co. has one that can be used. Borrower to pay.

85 Mtge. tax and stamps: Borrower to pay.

D'w'ng papers: Borrower to pay.

Recording; Borrower to pay.

Uncertified checks not acceptable in payment of above charges.

Applicant _____

Address _____

Accepted_____LAWYERS MORTGAGE COMPANY,

By _____

_____

Please examine and report title for above transaction, procure papers, close title, and issue policy to this company. You will collect all costs and disbursements; also our fee, from which your title charges are to be deducted.

Kindly search against any covenants and restrictions before going into examination of title.

LAWYERS MORTGAGE COMPANY,

By _____

[Endorsement on back]

STATE OF NEW YORK,

County of New York, ss:

On the ____ day of _____, 192__, before me came _____, to be known, who being by me duly sworn, did depose and say that he resides in_____;

86 that he is the _____ of the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

Exhibit R

AGREEMENT, made this ____ day of _____, 19__, between Lawyers Mortgage Company, hereinafter designated as "the lender," and _____, hereinafter designed as "the borrower."

Whereas the borrower owns the land described in Schedule A, hereto annexed, and has applied to the lender for a loan of _____ dollars to aid the borrower in the erection on said land of a structure or structures described in Schedule B, hereto annexed, which said structure or structures are hereinafter referred to as "the building."

Now, therefore, it is agreed between the parties as follows:

1st. The lender accepts such application, and if the borrower proceeds with the erection of the building and observes the terms of this agreement, will loan or procure to be loaned to the borrower,

the sum of ---------- dollars, to be advanced in install-
87 ments as set forth in Schedule C, as hereunto annexed, which loan is to be secured by the bond of the borrower, conditioned for the repayment of the amount so advanced on ----------, with interest thereon from the dates of the various advances at the rate of ---- per cent per annum until the completion of said building, which completion shall be evidenced by a certificate of the lender, and after the delivery of such certificate at the rate of ---- per centum per annum, payable semiannually, and by a mortgage covering said premises, in which the wife, if any, of the borrower, shall join, which mortgage shall be a valid lien on a good and marketable title in fee to said premises for all sums that may be advanced on said bond and mortgage, subject to no encumbrances except such as may be waived by the lender.

Said mortgage shall contain the clauses employed by the Lawyers Mortgage Company in its building-loan mortgages, and is hereinafter referred to as "the mortgage."

2nd. The borrower agrees to take such loan and covenants to observe the terms of this agreement.

3rd. The following provisions shall be observed in and about the construction of the building:

(a) Should the plans or any modification thereof not be in the hands of the lender at the time of the execution of this agreement, they shall be submitted to the lender before they are approved by the superintendent of buildings.

88 (b) The building shall be constructed in strict accordance with the plans and specifications approved by the lender and all material shall be sound and perfect and no second-hand material shall be used.

(c) The lender shall have sufficient notice to permit and examination of the bottom of the trenches before foundation concrete is started.

(d) If there be steel in the construction of the building, the members of the steel work shall be painted after construction, a field coat different from the shop coat; and of a quality of paint approved by the lender.

(e) The details of the floor construction and framing plans shall be submitted to the lender for approval before the contract therefor is let.

(f) Permanent stairs with temporary treads shall be erected as rapidly as the frame work is erected, but if the permanent stairs shall be delayed, temporary plank stairs shall be erected in lieu thereof.

(g) After floor filling is completed and before the wood flooring is laid in each story sufficient notice shall be given to the lender to enable inspection of the same.

(h) The lender shall have sufficient notice when tests of the plumbing and framing systems and structural work are to be made,

and any further tests required by the lender shall be made
89 by the contractors for such work under the direction of the lender, at the expense of the borrower.

(i) The framework of all fireproof buildings shall be of steel and all connections within a three-foot radius of columns shall be riveted.

(j) The lender shall be given an opportunity to examine all cast-iron work used in the construction of the building before it is painted, and no cast-iron members shall be used which are not approved by the lender. Any such member which may not have been so approved which shall be incorporated in the building shall be removed whenever required by the lender.

4th. During the construction of the building the lender and the holder of the mortgage and the lender's architects and engineers may from time to time inspect the building and shall be furnished, if required by them, with copies of all plans, detailed plans, shop drawings, and specifications relating to the construction of the building, and they may examine all plans, detailed plans, shop drawings, and specifications which are kept at the work.

5th. No advance shall be due unless all work usually done at the stage of construction when the advance is payable under the terms of Schedule C be done in a good workmanlike manner, and all materials and fixtures usually furnished and installed at such stage of construction be furnished and installed, nor unless all ironwork and construction be approved by an engineer satisfactory to the lender.

90 Parts or the whole of any instalments may be advanced before they become due if the lender or holder of the mortgage believe it advisable so to do and all such advances or payments shall be deemed to have been made in pursuance of this agreement and not to be modifications thereof. The making of any advance or any part of an advance shall not be deemed an approval or acceptance by the lender or the holder of the mortgage of the work theretofore done. The holder of the mortgage may make any advances or parts of any advances after the happening of any of the events specified in the clause of this agreement numbered 7th without thereby waiving the right to demand payment of the mortgage debt and without becoming liable to make any other or further advance. All advances are to be made at the office of _____ and the borrower is to give to the lender five days' notice in writing before demanding any advance.

6th. If the construction of the building is not carried on with reasonable dispatch, or should be discontinued at any time, the holder of the mortgage may protect or complete the building; if any mechanic's lien or liens should be filed against said premises, such holder may retain or deposit in behalf of the borrower, with the clerk of the county in which said premises are situated, sums sufficient to discharge such lien or liens; if the building be not completed or be

untenanted, such holder may take possession thereof, employ watchmen to protect the building from depredation or injury, and may preserve and protect the fixtures and property therein; if
91 interest should become overdue on any prior mortgage, such holder may pay the same; if any taxes, assessments, or water rates affecting said premises should become due and remain unpaid, such holder may pay the same; any sums paid or expended in accordance with any of the foregoing provisions of this clause shall be deemed to be advanced to the borrower and shall be secured by said bond and the mortgage and, at the option of the holder of the mortgage, may be deducted from any advance thereafter becoming due.

7th. Whenever and as often as any of the following events occur before the amount of said loan is fully advanced, all obligation on the part of the lender or the holder of said mortgage to make or procure any further advances shall cease, if the lender so elect, and further, if either the lender or the holder of said mortgage so elect, the said mortgage debt shall immediately become due and payable, anything in said mortgage or in said bond contained to the contrary notwithstanding:

(a) If a copy of the plans and specifications of the building and of any modifications thereof be not furnished to the lender whenever the lender shall require the same.

(b) If the plans and specifications shall not be satisfactory to the lender.

(c) If the plans be not approved by the building department before an advance is demanded.

(d) If the building be not erected in strict accordance with the plans and specifications approved by the lender.

92 (e) If the materials or construction of the building be not satisfactory to the lender.

(f) If any materials, fixtures or articles used in the construction of the building or appurtenant thereto should be purchased by the borrower or any contractor or other person furnishing labor or materials to the building, so that the absolute ownership of such materials, fixtures or articles will not vest in the borrower immediately on delivery thereof at the building.

(g) If the borrower do not disclose to the lender the names of all persons with whom the borrower contracts or intends to contract for the construction of the building or the furnishing of labor or materials therefor and obtain the acceptance by the lender of such persons as contractors upon the building.

(h) If the borrower do not produce upon demand the contracts, bills of sale or agreements or any of them under which the borrower claims title to the materials, fixtures and articles used in the construction of the building and appurtenant thereto.

(i) If the borrower should not proceed continuously with the erection and completion of the building (stoppage by reason of actual strikes excepted.)

(j) If a survey should show that the building encroaches upon property other than that described in Schedule A, to an extent deemed material by the lender.

93 (k) If there should be at any time any note or notice of violation of law or of any municipal regulation or ordinances filed in or issued by any public department or authority against the building or against the borrower by reason of any matter in or about the construction of the building.

(l) If the building should be materially injured or destroyed by fire or other casualty.

(m) If the borrower do not observe the provisions of the clauses of this agreement numbered 3rd and 4th.

(n) If the borrower should assign this contract or any interest therein, or any right to receive any payment or portion of a payment herein provided for, or give or issue an order on the lender or holder of the mortgage for the payment of any money payable under this agreement.

(o) If a petition in bankruptcy should be filed by or against the borrower.

(p) If the borrower should convey said premises or any interest therein.

(q) If the premises should become encumbered by any lien or encumbrance not herein provided for.

(r) If default should be made in the payment of interest upon any of the mortgages herein mentioned.

(s) If the borrower does not take the advances within fifteen days after they are made payable.

94 The mortgage may contain the foregoing provisions or any of them, but the omission of any such provisions shall not be a waiver of any of them.

8th. So much of the loan as may be required therefor may be applied by the lender to the payment, satisfaction or disposition of any mortgage or mortgages or other encumbrances now affecting the premises or which may hereafter affect the same, and such application may be made whenever the lender shall so elect. So much of the loan as may be necessary for that purpose may be applied under the direction of the borrower to the payment of any fees, brokerage or other expenses incident to the obtaining or making of the loan herein agreed to be made.

9th. The borrower shall pay all fees heretofore agreed to be paid to the lender or any other person or corporation, the expense of examination of title, the recording tax upon the mortgage, the charges for drawing and recording papers and for all searches which may be required by the lender to assure the lender that the mortgage is a lien as herein covenanted; the borrower shall furnish to the lender, or the lender may procure, surveys made by a surveyor satisfactory to the holder of the mortgage whenever required by

such holder; any such fees and charges and the charges for surveys may be deducted from any advance whenever the lender shall elect so to do.

10th. At the option of the lender or holder of the mortgage no advance need be made so long as there is noted in any municipal or other public department any note or notice that the building violates any provision of law or ordinance or does not comply with any provision of law or any ordinance applicable thereto. The borrower shall furnish to the lender official searches made in such departments whenever required so to do.

11th. In case the building be one to which the provisions of the tenement-house law apply—

(a) The first advance shall not be due until the plans shall have been approved by the tenement-house department, and a written certificate to that effect shall have been issued by such department.

(b) No other advance shall be due unless the building shall comply with the provisions of the tenement-house law, so far as such law then may be applicable.

(c) The last advance shall not be due until the borrower shall produce a certificate issued by the tenement-house department that said building conforms, in all respects, to the requirements of said law.

12th. So much of any advance as may be necessary may be applied to the payment of accrued interest on any mortgage mentioned in this contract and to any sums owing by the borrower to the lender for fees, surveys, recording and other proper charges.

13th. That the lender may at any time release portions of the mortgaged premises upon receiving what, in the opinion of the lender, is a proper payment on account of the mortgage debt, and may at any time satisfy any of said mortgages upon receiving the amount due it, without affecting any of its rights under the other mortgages or this agreement.

14th. The lender or any holder of said bond and mortgage may extend the payment of the principal secured by said bond and the mortgage, and any extension so granted shall be deemed made in pursuance of this agreement and not to be a modification thereof.

15th. If more than one building is to be erected under this contract, as specified in Schedule B, and more than one mortgage given, the words "bond," "mortgage," and "building" when they appear shall be read as though written "bonds," "mortgages," and "buildings," and in such case it is hereby further expressly agreed between the lender and the borrower that until all the buildings to be erected on all the premises herein described are completed, and all the advances to be made under this agreement as building loans are made, in case of any default on the part of said borrower, or upon the happening of any event which entitles the lender to elect that the whole sum secured by any one of said bonds and mortgages be forthwith due and payable, the lender may, at its option, elect that all

the bonds and mortgages to be given under this agreement be forthwith due and payable, anything contained herein or in any of said bonds and mortgages to the contrary notwithstanding; and the
97 lender may thereupon, in such a case, proceed to foreclose all of such bonds and mortgages in one action in all respects as though the said mortgages constituted a single blanket mortgage for the aggregate amount of said mortgages, covering all of the premises described in them. In such case all advances made upon each and all of said bonds and mortgages shall be regarded for all purposes as advances made upon such a blanket mortgage, covering all of said premises and secured thereby.

16th. Notices from the lender to the borrower may be given by mailing the same to the borrower, addressed at ----------, and any notice so given shall be deemed to be sufficient for all purposes.

In witness whereof the parties hereto have signed and sealed these presents the day and year first above written.

Schedule A

Annexed to and forming part of the foregoing agreement.

98 Schedule B

Annexed to and forming part of the foregoing agreement.
Bond: ----------
Premises: ----------

SCHEDULE OF ADVANCES TO BE MADE ON WITHIN BUILDING LOAN

1st payment: When the rear and side walls, the walls enclosing stairwells and all interior brick walls are up to the second tier of beams, and the front walls are up to the first tier of beams, and the second tier of beams is laid and fastened in place, the sewer connections are made with the street, and the water connected with the street water mains, the sum of ----------

2nd payment: When the rear and side walls, the walls enclosing stairwells and all interior brick walls are up to the fourth tier of beams, and the front walls are up to the third tier of beams, and the fourth tier of beams is laid and fastened in place, the sum of ----------

3rd payment: When the building is fully enclosed, all bulkheads completed, permanent roof is on and water-tight, the roof copings are on, cornice and skylights are on, chimneys topped up, leaders up and connected from the roof with the sewer, the sum of ----------

4th payment: When the studding and partitions are up, the
99 furring strips and lathing are on, the rough flooring laid throughout, the rough iron plumbing, gas piping and steam

risers installed in place, together with the electric-light wiring, steam heating apparatus is in the cellar, all stairs stepped up, the scratch coat and brown mortar are on, the sum of ----------

5th payment: When the white or finished coat of mortar is on, the sum of ----------

6th payment: When all the standing trim, window casings and the base are complete, the wardrobe and dresses are in place and the stoops and fire escapes finished, the sum of ----------

7th payment: When the doors are hung, except the vestibule doors, the windows are in and glazed, the plumbing is completed and tested, and all sinks, wash-tubs, bath-tubs, lavatories and water-closets are in and connected, dumb-waiters are in and in working order, finished floors laid throughout but not scraped, mantels, if any, fastened in place, the heating and hot-water apparatus installed, and the cementing is finished in the cellar, yards, courts, and sidewalks, the sum of ----------

8th payment: When the finished coat of roofing or slag is on, and the wash-roof completed, and all painting inside and outside of the buildings is done, the hardware is all on, the stairs and stair rails are completed, fences are up, gas ranges, ice boxes, and overhead driers are in place, the electric fixtures are up, and the building is in all respects within and without completed and ready for occu-
100 pancy, except the decorating, and the certificates obtained from the fire underwriters, the building and the tenement-house departments, showing that the house is fully completed according to the requirements of said departments, and that there are no violations of the building laws, and the borrower furnishes satisfactory proof to the lender that the bond and mortgage mentioned herein are first liens upon the heating plant, plumbing work, gas and electric fixtures, the sum of ----------

9th payment: The final payment of ----------

Total, $----------

Schedule D

Annexed to and forming part of the foregoing agreement.

LAWYERS MORTGAGE COMPANY

General specifications for new nonfireproof buildings in order that the provisions of the building loan contract may be specifically observed.

Streets: Where streets are not regulated, graded, and paved, builders shall erect the buildings according to an established
101 grade approved by the city departments, and shall submit survey before starting excavations.

Trenches and footings: The lender shall have sufficient notice to examine trenches and footings for foundations.

Foundations are to be carried to bed rock, or below frost line.

Doubtful foundations and questions relating to the safe sustaining power of a soil, shall be submitted to an engineer selected by the lender.

Brickwork: Brick for fronts and street courts shall be an approved face brick as per samples to be submitted.

Common brick shall be new and hard burnt throughout, laid in cement mortar solid, plumb and to a line. No used brick shall be permitted without the consent of the lender.

Above grade.—Mortar may be mixed with a small portion of hydrated lime.

Furring: All exterior walls shall be furred (except walls covered by adjacent buildings).

Stone: When stone is used for cellar and area walls, same must be laid in a full bed of cement mortar.

If artificial or cast stone is to be used in any part of the structure, special permission must be obtained from the lender before using same.

102 Steel work: Bottom flanges of all steel floor beams shall be covered with Portland-cement mortar over wire mesh.

Steel floor beams shall rest on templates and be properly anchored in walls and fastened or framed to girders. All steel work shall have two coats of paint.

Arches: Floor arches shall be of cinder concrete mixed in proportions, one part of Portland cement, two parts of sand and five parts of clean steam ashes. Cinder fill shall be composed of at least one part of cement and eight parts of cinders.

Framing: All wooden beams shall be properly framed around all floor openings and chimney flues. Headers, trimmers, and tail beams are to be hung in bridle irons. Floor beams bearing on brick walls shall be properly beveled.

Rough flooring shall be provided throughout building and same to be properly laid and well nailed to the beams.

Studding: Top and bottom plates shall be nailed to floor beams.

Bridging for partitions shall be of the "herringbone" method, and the studs at all door openings shall be doubled and set on the 4'' way. Studs for apartment partitions shall be carried down between beams and fire stops provided.

103 Grounds: Grounds shall be applied to the heads and jambs of all door and window openings.

Roofing: Pitch of roof to be properly framed and braced in all directions. The distance between the top of roof beams and the underside of roof boards at the lowest point shall be not less than 1 ft. Suitable air vents shall be provided. Best quality of materials and a type of roofing as approved by the lender. Copper or plastic slate shall be used as flashings. Cast-iron leaders shall be provided inside of building and leader boxes shall be of copper. Outside leaders will not be approved.

Bulkheads: Dumbwaiter bulkheads shall be covered with T. & G. sheathing and galvanized sheet metal.

Elevators: Shall be of an approved type equipped with proper safety devices and all elevator entrance doors shall be framed with steel bucks. A certificate of test must be secured from the bureau of buildings.

Stairs: Permanent stairs with temporary treads shall be provided as rapidly as framework is erected.

Incinerators: When incinerators are to be used, same shall be installed in a separate compartment on each story, which shall be provided with proper lighting facilities.

104 Plumbing test: The lender shall have sufficient notice when water test is to be applied to rough plumbing.

Lathing: All partitions and ceilings of wood beams to be lathed with first-quality spruce, lath free from sap or knots. Where wall tile is to be installed, the best quality of expanded metal lath shall be used and covered with a scratch coat of cement mortar.

Plastering: Plastering on laths shall be three-coat work; on brick walls two-coat work. When patent plaster or lime mortar is used, special care must be exercised in mixing and applying same.

Sufficient time must be allowed for the scratch coat to dry before applying the brown coat. Salient angles shall be protected with metal corner beads.

Plumbing: All lavatories, sinks, and wash trays shall be of vitreous porcelain with compression faucets.

Lavatories to be of pedestal type; water-close's shall be vitreous porcelain with flushometers.

Bathtubs shall be of porcelain or enamelled iron (built in) with compression faucets, and so arranged so as not to obstruct egress to windows; wash-tray covers to be enamelled iron.

Leaders shall be inside, of cast-iron pipe, and leader boxes shall be of copper.

105 All hot and cold water risers and each group of fixtures shall be controlled by gate valves except valves used in angle positions. All rising lines shall be properly proportioned in size. Gas piping shall be of sufficient size to supply all burners and all gas ranges simultaneously.

Approved house pumps shall be provided and arranged for where necessary. An adequate hot-water heating system shall be provided with storage tank, having a capacity of not less than 30 gallons per family.

Steam heating: An adequate steam heating plant shall be provided of sufficient capacity to meet the severest requirements of cold weather. Risers will be permitted in bathrooms and kitchens. All other rooms shall be provided with radiators. All risers shall have shut-off valves on all rising lines in cellar.

Windows: Window frames shall be made tight with proper stops in brickwork and caulked with oakum and pointed with Portland cement or an approval waterproofed compound.

Weather strips: Approved metal weather strips shall be installed for all wooden sashes.

Finished flooring: Finished floors of foyers, private halls, dining and living rooms shall be first-quality oak 7/8" thick
106 tongue and grooved. All other rooms may have number one comb grain pine floors. If same is used, no other quality will be accepted. An approved deafening felt shall be laid under all finished floors.

Trim: All trim must be of good quality and approved by the lender.

Tiles: The walls of all bathrooms must be tiled with the best grade of tile, to a height of at least 4 feet above floor.

The floors of all bathrooms, entrance halls, and stair landings shall be tiled with the best grade of tile, square or hexagon in shape.

Electric work: Specifications and wiring plan plan shall be submitted for lender's approval.

Hardware: Hardware provided shall be commensurate with the character of the buildings.

Fire escapes: Railings for front fire escapes shall be of a neat ornamental design.

The above specifications are for the general work of the
107 ____-story apartment house to be erected at _____ in accordance with accompanying drawings by—

_____, architect.

_____, builders.

By _____.

STATE OF NEW YORK,
CITY OF NEW YORK,
County of _____, *ss:*

On this ____ day of _____, in the year one thousand nine hundred and _____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resides in _____; that he is the _____ of _____, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

108 STATE OF NEW YORK,
CITY OF NEW YORK,
County of _____, *ss:*

On this ____ day of _____, in the year one thousand nine hundred and _____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resides in _____; that he is the _____ of _____, the corporation described in and which executed the foregoing instrument; that he knows the seal of said

corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

109 STATE OF NEW YORK,
CITY OF NEW YORK,
County of ----------, *ss:*

On this ____ day of ----------, in the year nineteen hundred and --------, before me personally came ----------, to me known to be the individual described in, and who executed the foregoing instrument and acknowledged to me that he executed the same.

[Endorsement on back]

Mtge. No. ____
Title No. ____

Lawyers Mortgage Company with contract for building loan.
Lawyers Mortgage Company, 56 Nassau Street, Borough of Manhattan, and 184 Montague Street, Borough of Brooklyn, New York City; 161–01 Jamaica Ave., Jamaica.

110 *Exhibit S*

Know all men by these presents, that ____, hereinafter designated as the obligor , do hereby acknowledge ---------- to be justly indebted to Lawyers Mortgage Company, hereinafter designated as the obligee, in the sum of ---------- dollars, lawful money of the United States, which sum said obligor do hereby ---------- covenant to pay the said obligee, its successors or assigns, on the ____ day of ----------, nineteen hundred and --------, with interest thereon to be computed from the -------- day of ----------, 192__, at the rate of ____ per centum per annum, and to be paid on the ____ day of ---------- next ensuing the date hereof, and semiannually thereafter.

It is hereby expressly agreed that the said principal sum shall become due at the option of the said obligee, or the successors or assigns of the obligee, after default in the payment of interest for thirty days, or after default in the payment of any tax, assessment or water rates for thirty days after notice and demand, or after default in the payment of any instalment of principal, or after any other default, or upon the happening of any event by which, in any case, under the terms of the mortgage securing this bond, the said principal sum may or shall become due and payable; also that all of the covenants and agreements made by the said obligor in said mortgage are hereby made part of this instrument.

Signed and sealed this ____ day of ----------, 192__.
In the presence of—

---

111 STATE OF NEW YORK,
County of ----------, *ss:*

On this ---- day of ----------, in the year one thousand nine hundred and --------, before me personally came ----------, to me known and known to me to be ------ the individual described in and who executed the foregoing instrument and ------ duly acknowledged that he executed the same.

STATE OF NEW YORK,
County of ----------, *ss:*

On this ---- day of ----------, in the year one thousand nine hundred and --------, before me personally came ----------, to me known and known to me to be ------ the individual described in and who executed the foregoing instrument and ------ duly acknowledged that he executed the same.

STATE OF NEW YORK,
County of ----------, *ss:*

On this ---- day of ----------, in the year one thousand nine hundred and --------, before me personally came ----------, subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did de-
112 pose and say, that he resides in----------; that he knows ----------, the individual described in and who executed the foregoing instrument; that he was present and saw ------ execute and deliver the same, and that he, said witness, thereupon at the same time subscribed h name as witness thereto.

STATE OF NEW YORK,
County of ----------, *ss:*

On this ---- day of ----------, in the year one thousand nine hundred and --------, before me personally came----------, to me known, who being by me duly sworn, did depose and say that he resides in ----------; that he is the ---------- of the corporation described in, and which executed, the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

113 [Endorsement on back]

Mortgaged premises: _____
Land section No. ____
Block No. ____
Lot No. ____
(Diagram.)
Approved as to form.
Mtge. No. ____
Title No. ____
Address: _____
To Lawyers Mortgage Company.

BOND

Amount, $_____
Dated, _____, 19___
Principal due, _____, 19___
Interest payable, _____
Interest rate, _____

Lawyers Mortgage Company, 56 Nassau Street, Borough of Manhattan; 184 Montague Street, Brooklyn; 4 Herriman Avenue, Jamaica; New York City

THIS MORTGAGE, made the _____ day of _____, nineteen hundred and _____, between _____, the mortgagor, and Lawyers Mortgage Company, whose principal
114 place of business is at number 56 Nassau Street, in the Borough of Manhattan of the city of New York, the mortgagee,

Witnesseth, that to secure the payment of an indebtedness in the sum of _____ dollars, lawful money of the United States, to be paid on the _____ day of _____, nineteen hundred and _____, with interest thereon to be computed from _____, at the rate of _____ per centum per annum, and to be paid according to a certain bond or obligation bearing even date herewith, the mortgagor hereby mortgages to the mortgagee

Together with all fixtures and articles of personal property, now or hereafter attached to, or used in connection with, the premises, all of which are covered by this mortgage.

And the mortgagor covenants with the mortgagee as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.

2. That the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagee.

3. That no building on the premises shall be removed or demolished without the consent of the mortgagee.

4. That the whole of said principal sum shall become due after default in the payment of any installment of principal or of
115 interest for thirty days, or after default in the payment of any tax, water rate or assessment for thirty days after notice and demand.

5. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.

6. That the mortgagor will pay all taxes, assessments, or water rates, and in default thereof, the mortgagee may pay the same.

7. That the mortgagor within six days upon request in person or within thirty days upon request by mail will furnish a statement of the amount due on this mortgage.

8. That notice and demand or request may be in writing and may be served in person or by mail.

9. That the mortgagor warrants the title to the premises.

10. That in case of a sale, said premises, or so much thereof as may be affected by this mortgage, may be sold in one parcel.

11. That the whole of said principal sum shall become due at the option of the mortgagee after default for sixty days after notice and demand, in the payment of any installment of any assessment for local improvements heretofore or hereafter laid, which is or may become payable in annual installments and which has affected, now affects, or hereafter may affect the said premises, notwithstand-
116 ing that such installment be not due and payable at the time of such notice and demand; and also that the whole of said principal sum shall become due at the option of the mortgagee upon any default in keeping the buildings on said premises insured against loss by fire as required by paragraph No. 2 above, or immediately upon the actual or threatened demolition or removal of any building erected or to be erected upon said premises, or if after application by any holder of this mortgage to two or more fire-insurance companies lawfully doing business in the State of New York and issuing policies of fire insurance upon buildings situate in the place where the mortgaged premises are situate, the companies to which such application has been made shall refuse to issue such policies.

12. In the event of the passage after the date of this mortgage of any law of the State of New York, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for State or local purposes, or the manner of the collection of any such taxes, so as to affect this mortgage, the holder of this mortgage and of the debt which it secures, shall have the right to give thirty days' written notice to the owner of the mortgaged premises requiring the payment of the mortgage debt. If such notice be given, the said debt shall become due, payable, and collectible at the expiration of said thirty days.

13. That the holder of this mortgage in any action to foreclose it, shall be entitled (without notice and without regard to the
117 adequacy of any security for the debt) to the appointment of a receiver of the rents and profits of said premises, and in the event of any default in paying said principal or interest, such rents and profits are hereby assigned to the holder of this mortgage as further security from the payment of said indebtedness.

14. That the whole of said principal sum shall become due at the option of the mortgagee, if the buildings on said premises are not maintained in reasonably good repair or upon the failure of any owner of said premises to comply with the requirement of any department of the State or city of New York, within three months after an order making such requirement has been issued by any said State or city department.

15. And the mortgagor does further covenant and agree, anything herein contained to the contrary notwithstanding, that, in default of the payment by the mortgagor of any taxes, assessments, or water rates which may be imposed by law upon the said mortgaged premises, or any part thereof, when the same shall become due and payable, it shall and may be lawful for the said mortgagee, without notice to or demand from the mortgagor, to pay the amount of any such tax, assessment, or water rates, and any amount so paid the mortgagor covenants and agrees to repay to the mortgagee, with interest thereon, without notice or demand, and the same shall be a lien on the said premises, and be secured by the said bond and by these presents; and the whole amount hereby secured, if not then due, shall thereupon, if the mortgagee so elect, become due and payable forthwith.

118 In witness whereof this mortgage has been duly executed by the mortgagor.

In the presence of—

_____.

STATE OF _____,

County of _____, *ss:*

On the _____ day of _____, 192__, before me came _____, to me known to be the individual described in, and who executed the foregoing instrument and acknowledged that _____ executed the same.

STATE OF _____,

County of _____, *ss:*

On the _____ day of _____, 192__, before me came _____, to me known to be the individual described in, and who executed the foregoing instrument and acknowledged that _____ executed the same.

STATE OF _____,

County of _____, *ss:*

On the _____ day of _____, 19__, before me came _____, to me known, who, being by me duly sworn,

did depose and say that he resides in ----------;
119 that he is the ---------- of the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed ------ name thereto by like order.

Approved as to form.
Mtge. No. ----
Title No. ----
To Lawyers Mortgage Company.

Mortgage.
Dated, ----------, 192--
Amount, $----------

The land affected by the within instrument lies in section ----, in block ----, on the land map of the ----------

Lawyers Mortgage Company, 56 Nassau Street, Borough of Manhattan; 184 Montague Street, Borough of Brooklyn; 4 Herriman Avenue, Jamaica; New York City.

120 *Exhibit T*

Policy No. ---- Amount, $----------

Lawyers Mortgage Company, 56 Nassau Street, New York City

The Lawyers Mortgage Company, hereinafter termed "the company"), in consideration of the premium and terms of guarantee named below, hereby guarantees to ----------, address ----------, and to such legal representative, succes'ors, or assigns of the above as shall present to the company satisfactory proof of ownership of this policy and of the bond and mortgage described in Schedule A (all of whom are herein designated as "the assured"):

First. Payment of interest at the rate of ---- per cent per annum, subject to such deduction for income tax as may be required by law, within five days after the same shall have become due under the terms of said bond and mortgage upon the amount of the principal sum hereby guaranteed at any time outstanding until said principal sum shall be wholly paid.

Second. Payment of the principal sum of ---------- dollars, secured by said bond and mortgage as and when collected, but in any event within eighteen months after payment shall be demanded in writing by the assured, provided such demand be made after said principal sum shall have become due under the terms of the said bond and mortgage.

121 By the acceptance of this policy the company is irrevocably appointed the exclusive agent of the assured at its own expense

to sue for and receive the proceeds of any policy of title insurance and of any policy of fire insurance covering the mortgaged premises and to collect the interest on the bond and mortgage hereby guaranteed and to exercise every option or privilege in said bond and mortgage or either of them contained and given to the mortgagee; and the assured agrees until the breach or termination of this guarantee to refrain from exercising any such option or privilege and from collecting any part of said interest or of the principal secured by said bond and mortgage except through the company and to permit the company to retain as its premium for this guarantee all interest collected in excess of the rate guaranteed above.

This policy is subject to the agreements, conditions, and general provisions hereto annexed and to such others as may be endorsed hereon and signed by an officer of the company, all of which are hereby made a part of this contract.

In witness whereof the corporate seal of the said company is hereunto affixed and these presents signed by its proper officers thereunto duly authorized, this ------ day of ----------, in the year one thousand nine hundred and --------.

LAWZUS MORTGAGE COMPANY,

By ----------

Attest:

Asst. Secretary.

122 Schedule A

The bond covered by this guarantee was made by ----------
---------- to ----------, dated ----------,
and is marked for identification with the number of this guarantee and the signature of one of the officers of the company.

It was given for the payment of ---------- dollars on the ------ day of ----------, with interest at the rate of ---- per cent per annum, payable on the ------ day of ---------- and ---------- in each year.

The mortgage given to secure said bond is similarly identified and was made by ---------- to ---------- dated ----------, and recorded in ---------- County ---------- office on the ------ day of ----------.

The location and description of the real property covered by the mortgage guaranteed under this policy is shown by the annexed diagram.

(Diagram.)

AGREEMENTS

The company is further bound:

First. To institute and conduct as and when it may deem expedient but without expenses to the assured all such proceedings as may

be necessary to enforce payment of said bond and mortgage or the fulfillment of the other covenants and agreements contained therein.

123 Second. To keep the title to the mortgaged premises guaranteed to the amount of this policy during the life hereof.

Third. To keep the mortgaged premises adequately insured against fire and to require the owner thereof to pay all such taxes, assessments, and water rates and all such fire insurance premiums as by the terms of the mortgage are required to be paid.

CONDITIONS

The assured is bound:

First. To notify the company promptly in writing of any assignment of said bond and mortgage and of any action or proceeding of which the assured has knowledge affecting said bond and mortgage.

Second. To forward to the company promptly any and all notices relating to any policy of fire insurance affecting the mortgaged premises.

Third. To permit the company, and the company is hereby authorized without further action by the assured, at any time when said bond and mortgage shall become due, either by the terms thereof or by reason of the exercise of any option given therein to the mortgagee, to enforce payment of the same in the name of the assured, by its own agents and attorneys but without expense to the assured either by foreclosure or otherwise; and on notice from the company to produce and deposit with it for that purpose the

124 bond and mortgage, all securities collateral thereto and all muniments of title relative thereto held by the assured, and to execute and verify such proofs and pleadings as may be required by the company in the course of such proceedings, and out of the proceeds of such action to permit the company to receive so much as may remain after paying to the assured whatever may be due the assured for principal and interest at the rate hereby guaranteed.

Fourth. To permit the company to buy in the property covered by said bond and mortgage and to take title thereto in the name of the assured, in case at any sale of said property in any foreclosure suit brought by the company in the name of the assured no bid shall be received for said property sufficient to cover the amount of the judgment and the expenses of the sale. In case the said property shall be so purchased by the company in the name of the assured, the company shall be entitled, upon paying the assured, his executors, administrators or assigns within the time limited in the foregoing policy, the amount of the principal of said mortgage together with interest thereon at the rate hereby guaranteed (in so far as the same has not already been paid), to the conveyance of the said property to it or its nominee by the assured or his heirs devisees, free and clear of all claims, charges and liens thereon created by the assured since the purchase thereon upon the said fore-

closure and to an assignment of the deficiency judgment entered in said foreclosure action. Until such payment or until the time shall have expired within which same may be made by the com-
125 pany, the company shall be entitled to the possession and management of the said property and to control the leasing, repairs and maintenance and insurance thereof at its own expense and to receive the rents and profits thereof, but at all times the liability of the company under this policy shall continue until the assured shall have received the full amount of the principal guaranteed hereby with interest thereon at the rate guaranteed hereby.

Fifth. To assign and deliver said bond and mortgage to the company if required to do so whenever the assured is entitled to require payment thereof, upon receipt from the company of the full amount due the assured under this policy upon said bond and mortgage.

GENERAL PROVISIONS

This policy may be assigned by the assured, by written assignment, to any person to whom the said bond and mortgage or any interest therein may have been transferred, provided that the assignment of such bond and mortgage, or of such interest therein, shall also be in writing, duly acknowledged or proved according to law, and that, if not duly recorded, such assignment, or a duplicate or a certified copy thereof as the company may require shall be deposited with the company.

All notices or demands provided for in this policy shall be in writing and may be sent by mail.

The address of the assured to which notices shall be sent shall be deemed to be the address stated herein or such other address as may have been furnished by the assured to the company in writing for this purpose.

126 All notices to or demands on the company shall be sent to its principal office in the Borough of Manhattan, in the city of New York, and all payments by this company of principal and interest shall be made at said place.

(Reverse side)

For value received_____assign the within policy to_____
Dated _____ _____
Witness: _____ _____
Approved: LAWYERS MORTGAGE COMPANY,
_____
_____
For value received_____assign the within policy to_____
Dated _____ _____
Witness: _____ _____
Approved: LAWYERS MORTGAGE COMPANY,
_____
_____

127 Policy No. ____

Policy of mortgage guarantee. Lawyers Mortgage Company. Capital & surplus, $19,000,000. 56 Nassau Street, New York; 184 Montague Street, Brooklyn; 161-01 Jamaica Avenue, Jamaica; 17 Prospect Ave., Mt. Vernon.

Bond of _____
For $_____ Due _____
Interest payable _____
Property: _____

The Lawyers Mortgage Company maintains title insurance guaranteeing title to the within-described mortgage and that said mortgage is a valid first lien on a good and marketable title in fee to the property therein described.

128 *Exhibit U*

Series No. ____ Certificate No. ____

Lawyers Mortgage Company, incorporated as a title guaranty corporation under the laws of the State of New York (hereinafter termed "the company")

In consideration of the sum of _____ dollars, receipt of which is hereby acknowledged, has assigned and transferred and by these presents does assign and transfer unto _____, hereinafter termed "the assured," an undivided share or interest to the extent of said principal sum in _____, and the company hereby certifies that it holds said bond and mortgage, together with any guarantees of payment, insurance policies, and other instruments and evidences of title relating thereto, for the benefit of the assured and of any other persons interested in said bond and mortgage; and that the share or interest represented by this certificate is not subordinate to any other shares in said bond and mortgage and is not subject to any prior interest therein; and that this certificate is one of a series, all of like tenor, issued or to be issued for various sums to a total amount not in excess of _____ dollars, all secured by the bond and mortgage above described, which is a valid first lien upon the real property therein described; and that the said property has been appraised as being worth at least fifty per centum more than the total authorized amount of this series of certificates.

129 And the company hereby guarantees to said assured or to any other lawful holder hereof:

1st. Payment of interest at the rate of ____ per cent per annum, subject to such deduction for income tax as may be required by law, within five days after the same shall have become due under the

terms of said bond and mortgage upon the amount of the principal sum hereby guaranteed at any time outstanding, until said principal sum shall be wholly paid.

2nd. Payment of the principal sum of _____ dollars hereby guaranteed, secured by said bond and mortgage, as and when collected, but in any event, within eighteen months after payment shall be demanded by the assured, provided such demand be made in writing after said principal sum shall have become due under the terms of said bond and mortgage, subject, however, to the following conditions hereby mutually agreed upon between the company and the assured;

A. The company is appointed irrevocably by the assured as the agent of the assured to collect, sue for, and receive the principal and interest secured to be paid by said bond and mortgage, and to satisfy and discharge the said mortgage, in its own name on receiving full payment thereof; to collect, sue for, and receive and settle or compromise the fire insurance in case of loss by fire; and to exercise every right, option, or privilege in said bond and mortgage or either of them contained and given to the mortgagee.

130 B. Whenever the principal sum secured by said bond and mortgage shall become due for any cause, the company shall have the right without expense to the assured to collect said mortgage, and out of the proceeds of such collection to retain so much as may remain after paying to the assured whatever may be due to the assured of principal and interest on this certificate.

C. The company shall give to the assured written notice of the time of the payment of the principal sum secured by said bond and mortgage, by mailing the same to the assured at the address left by the assured with said company in writing, and upon payment of said bond and mortgage, the said mortgage may be cancelled of record, although the assured may fail to present this certificate. If the assured shall fail so to present this certificate, then upon such payment to the company, said sum hereby guaranteed may be held by the company to the credit of the assured or it may be deposited in a trust company in the city of New York, together with interest thereon to the date of such deposit at the rate aforesaid, as a special deposit for the benefit and credit of the assured, to be paid to the assured with such interest as may be allowed by the said trust company upon the surrender of this certificate to the trust company; and from the time of such deposit all interest hereby guaranteed and all responsibility of the company hereunder shall cease.

The company is bound:

131 To institute and conduct as and when it may deem expedient but without expense to the assured all such proceedings as may be necessary to enforce payment of said bond and mortgage or the fulfillment of the other covenants and agreements contained therein; to keep the title to the mortgaged premises guaranteed to the amount of this certificate during the life hereof; to keep the

mortgaged premises adequately insured against fire and to require the owner thereof to pay all such taxes, assessments and water rates and all such fire insurance premiums as by the terms of the mortgage are required to be paid.

Any excess of interest collected by the company on said bond and mortgage beyond the rate above mentioned in this certificate shall belong to the company.

This certificate may be assigned by endorsement but only when such assignment is registered on the books of the company.

Both principal and interest shall be payable at the principal office of the company in the city of New York.

In witness whereof the corporate seal of the said company is hereunto affixed and these presents signed by its proper officers thereunto duly authorized, this ------ day of ----------, in the year one thousand nine hundred and --------

LAWYERS MORTGAGE COMPANY.

By ----------

(Seal.)
Attest:

----------,
Assistant Secretary.

132 (Reverse side)

ASSIGNMENT

For value received ---------- assign the within certificate to ----------

---

Dated ----------
Witness: ----------

Registered on books of company.
Date ----------
Registration ----------

(Front of folder)

GUARANTEED FIRST-MORTGAGE CERTIFICATE

Amount, $----------
@----%
Series No. ---- Certificate No. ----
Secured by mortgage covering premises ----------

The company holds the bond and mortgage, title policy, and fire insurance covering the mortgaged premises. Principal and interest guaranteed by Lawyers Mortgage Company, 56 Nassau Street, New York.

133 *Exhibit W*

TREASURY DEPARTMENT

Washington

(Seal.)

Office of Commissioner of Internal Revenue.

Address reply to Commissioner of Internal Revenue and refer to MT-CST-2 N.Y.-3172—GCD, C1-R24451-R24598.

LAWYERS MORTGAGE COMPANY,

56 Nassau Street, New York, New York.

GENTLEMEN: Receipt is acknowledged of your letter of November 17, 1924, relative to claims filed for the refunding of $10,147 and $10,731, capital-stock tax for the taxable periods ended June 30, 1923 and 1924, respectively.

Communication has been received from the Income Tax Unit to the effect that as the result of an audit of your returns, with correspondence and all available information on hand, that your organization cannot be held as an insurance company. The outstanding facts that would seem to preclude the corporation from the status of an insurance company are as follows:

(1) During the year 1922 the total income of the company, as reflected by the return, amounted to $1,954,318.56. Of this
134 amount $655,283.70, or approximately 33%, was received as fees for placing loans on guaranteed mortgages; $214,303.56, or 10%, as fees for extending loans in force; and in addition thereto about $400,000, interest was received on mortgage loans.

(2) The amount of straight insurance business (guaranteeing mortgages) is only 35% of the total business done.

(3) On the return it is stated that the company sells guaranteed mortgages secured by New York City real estate.

In view of the foregoing facts this office is of the opinion that the company is liable for capital-stock tax, and the claims have been recommended for rejection and forwarded to the solicitor for final action. He has been advised that you desire a hearing on the claims at the time they are taken up for consideration, and no doubt you will be informed as to the date of such a conference.

Respectfully,

(Signed) R. M. ESTES,
Deputy Commissioner.

MB.

135 In United States Circuit Court of Appeals, Second Circuit

[Title omitted.]

Order dispensing with printing of certain exhibits

Upon the annexed consent and on motion of Charles H. Tuttle, United States attorney, attorney for defendant-appellant, it is hereby

Ordered that the following exhibits need not be printed in the record on appeal, but the same may be referred to on the argument and shall be deemed as part of said record as if printed therein:

Exhibit A—Copy of charter or certificate of incorporation of Lawyers Mortgage filed on or about February 9, 1893.

Exhibit B—Amended certificate of incorporation filed on or about January 10, 1905.

Exhibit C—Amended certificate of incorporation with the consent of the superintendent of insurance filed on or about January 18, 1913.

136 Exhibit D—Annual statements of condition as of December 31, 1921, filed with the superintendent of insurance.

Exhibit E—Annual statements of condition as of December 31, 1922, filed with the superintendent of insurance.

Exhibit F—Annual reports furnished stockholders showing condition of the company for the calendar year 1921.

Exhibit G—Annual reports furnished stockholders showing condition of the company for the calendar year 1922.

Exhibit H—A copy of plaintiff's by-laws in effect during the calendar years 1921 and 1922.

Exhibit I—Capital-stock tax return for the period from July 1, 1922, to June 30, 1923, inclusive, filed on July 29, 1922.

Exhibit J—Claim for refund filed on or about November 14, 1923.

Exhibit K—Capital-stock tax return filed on or about July 27, 1923, for the period from July 1, 1923, to June 30, 1924.

Exhibit L—Claim for refund filed on or about November 14, 1923.

Exhibit N—Consolidated income-tax return filed on or about March 15, 1922, for plaintiff and subsidiary companies for the calendar year 1921.

Exhibit O—Consolidated income-tax return filed March 14, 1923, for itself and subsidiary companies for the calendar year 1922.

Exhibit P—Consolidated income-tax return for itself and subsidiary companies filed March 15, 1924, for the calendar year 1923.

137 Exhibit V—Scrapbook kept by the secretary of the plaintiff containing newspaper and pamphlet advertisements.

Defendant's exhibits

Exhibit X1—Pamphlet entitled "Specialists in Safety."

Exhibits X2, X3, and X4—Blank forms.

Exhibit X5—Blank mortgage certificate.

Exhibit X6—Sample guaranty policy.

Dated, New York, March 28, 1930.

MARTIN T. MANTON,
United States Circuit Judge.

Entry of the foregoing order is hereby consented to without further notice.

Dated, New York, March 27, 1930.

SHERMAN & STERLING,
Attorneys for Plaintiff-Appellee.
CHARLES H. TUTTLE,
United States Attorney,
Attorney for Defendant-Appellant.

138 In United States District Court

[Title omitted.]

Assignments of error

Now comes the defendant, by Charles H. Tuttle, United States attorney, and says that in the record and proceedings in the above-entitled cause there is manifest error which occurred at the trial of said cause upon which he will rely in the prosecution of his appeal in the above-entitled cause in this, to wit:

First. The court erred in failing to dismiss the complaint herein.

Second. The court erred in directing judgment in favor of the plaintiff and against the defendant.

Third. The court erred in holding that at all the times material to this action the plaintiff was an insurance company within the meaning of sections 246, 247, and 1000 of the revenue act of 1921, and accordingly was not subject to the capital-stock tax imposed by sec. 1000 of said revenue act.

138 Fourth. The court erred in failing to grant the defendant's motion for the entry of judgment in his favor dismissing the complaint.

Fifth. The court erred in failing to direct the entry of judgment in favor of the defendant, and against the plaintiff, dismissing the complaint upon all the evidence adduced upon the trial.

Sixth. The court erred in admitting testimony to the effect that the difference in interest between that specified in the bonds and mortgages and that specified in the so-called "policy" or participation certificates is called a premium in business usage.

Seventh. The court erred in failing to hold that the burden is upon the plaintiff to establish its exemption from the operation of section 1000 of the revenue act of 1921.

Eighth. The court erred in failing to hold that the plaintiff has failed to sustain the burden which is upon it to prove that it was exempt from the operation of section 1000 of the revenue act of 1921 during the years in question.

Ninth. The court erred in failing to hold that the plaintiff has failed to establish that it was exempt from the payment of the capital-stock tax during the years in question.

Tenth. The court erred in failing to hold that the taxes in question were legally assessed and lawfully collected.

140 Eleventh. The court erred in failing to hold that the plaintiff has failed to establish that it issued policies of insurance in connection with any of its activities or that it charged a premium in connection with any of its activities.

Wherefore defendant prays that the judgment herein in favor of the plaintiff may be reversed and held for naught and that said defendant may be restored to all things which he has lost by reason of said judgment.

Dated, New York, N. J., January 7, 1930.

CHARLES H. TUTTLE,
United States Attorney for the
Southern District of New York,
Attorney for the Defandant.

Office and P. O. address: U. S. Courts and Old P. O. Bldg., Borough of Manhattan, city of New York.

141 In United States District Court

[Title omitted.]

Petition and Allowance of Appeal

Now comes the defendant, Frank K. Bowers, collector of internal revenue, and says that on the 22nd day of October, 1929, the court entered judgment herein against him in the sum of $20,878.00 with interest and costs, and that by said judgment certain errors were committed to the prejudice of the defendant, all of which will more fully appear from the assignments of error filed with this petition.

Wherefore the defendant prays an appeal from said judgment to the Circuit Court of Appeals for the Second Circuit for the correction of the errors so complained of, and for the allowance of said appeal and leave to prosecute the same and a reversal of said judgment, and that a transcript of the record and the proceedings in this cause duly authenticated be forwarded to said Circuit Court of Appeals.

142 Dated, New York, N. Y., January 7, 1930.

CHARLES H. TUTTLE,
United States Attorney for the
Southern District of New York,
Attorney for Defendant.

Office and P. O. address: U. S. Courts and Old P. O. Bldg., Borough of Manhattan, city of New York.

The above appeal as prayed for is hereby allowed.

FRANK J. COLEMAN,
United States District Judge.

143 [Citation in usual form omitted in printing.]

144 In United States District Court

[Title omitted.]

Stipulation as to record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, New York, April 14, 1930.

SHEARMAN & STERLING,
Attorneys for Plaintiff.
CHARLES H. TUTTLE,
United States Attorney,
Attorney for Defendant.

145 [Clerk's certificate to foregoing transcript omitted in printing.]

146 In United States Circuit Court of Appeals for the Second Circuit

No. 16—October term, 1930

Argued January 16, 1931. Decided June 1, 1931

LAWYERS' MORTGAGE COMPANY, PLAINTIFF-APPELLEE

v.

FRANK K. BOWERS, COLLECTOR OF INTERNAL REVENUE, DEFENDANT-appellant

Appeal from the District Court of the United States for the Southern District of New York

Before L. HAND, SWAN, and CHASE, Circuit Judges

Action by Lawyers' Mortgage Company, a New York corporation, against defendant, Bowers, to recover capital-stock taxes paid to him as collector of internal revenue for the years ending on June 30, 1923 and 1924, respectively. After trial without a jury upon an agreed statement of facts judgment was entered against defendant, and a certificate of probable cause was issued pursuant to section 989 of the Revised Statutes (28 U. S. C. A., § 842). The defendant appeals. Judgment affirmed.

For opinion below see (D. C.) 34 F. (2d) 504.

Robert E. Manley, acting U. S. atty., of New York City (Samuel C. Coleman and Frank Chambers, asst. U. S. attys., both of New York City, of counsel), for appellant.

Shearman & Sterling, of New York City (Harry W. Forbes, of New York City, of counsel), for appellee.

Opinion

SWAN, Circuit Judge:

After this appeal was taken the defendant died. Upon the argument this fact was suggested, and his executor, appearing by attorney and so requesting, was admitted as a party to the suit pursuant to rule 17 of this court. Some question was raised by the appellee, though the point was not pressed, whether the appeal ought to be continued by the defendant's executor or by his successor in the office of collector of internal revenue. In the light of the authorities it seems clear that the executor may properly be substituted. An action for the recovery of taxes illegally collected is based on the collector's personal liability resulting from the receipt of money wrongfully exacted by him; hence it can not be initiated against a successor in office who had no part in the collection or disbursement of the taxes, nor, despite the act of February 8, 1899 (30 Stat. 822 (28 U. S. C. A., § 780, note)), can it be continued against such successor in office. (Smietanka v. Indiana Steel Co., 257 U. S. 1, 5, 42 S. Ct. 1, 66 L. Ed. 99; Union Trust Co. v. Wardell, 258 U. S. 537, 542, 42 S. Ct. 393, 66 L. Ed. 753.) Although the act of February 8, 1899, was amended in 1925 (43 Stat. 941 (28 U. S. C. A., § 780)), we see nothing in the amendment to cause a change in the rule of the Wardell case. That question, however, need not be now determined, for there has been no effort to bring in the defendant's successor in office. That the cause of action, survived against the defendant's executor is settled by Patton v. Brady (184 U. S. 608, 22 S. Ct. 493, 46 L. Ed. 713). Hence rule 17 of this court is applicable, permitting the personal representative of the deceased party to come in voluntarily.

The taxes in dispute were assessed and collected under section 1000 of the revenue act of 1921 (42 Stat. 294). They were paid voluntarily, but, as the plaintiff now asserts, erroneously. Claims for refund having been rejected, this suit resulted. The
147 sole question it presents is the same as that discussed in Home Title Ins. Co. v. United States ((C. C. A.) 49 F. (2d) —), this day decided, namely, whether the plaintiff is to be deemed an insurance company within the meaning of section 246 of the revenue act of 1921 (42 Stat. 262). The facts in the two cases are, however, somewhat different.

The main difference is that Lawyers' Mortgage Company, unlike the plaintiff in the other case, issues no policies of title insurance. It was incorporated in 1893 under article 5 of the insurance law of the State of New York (Laws N. Y. 1892, c. 690), pertaining to title and credit guaranty corporations, and it is subject to supervision by the insurance department of the State, with the requirements of which it has always complied. Prior to amendment of its charter in 1913, its sole business was issuing policies of mortgage insurance; that is, policies guaranteeing payment of existing mortgages owned

by the persons applying for its policies. In that year the statute under which it was incorporated was amended to permit mortgage guaranty companies to invest their own funds in mortgages and to sell the same accompanied by the company's guaranty. (N. Y. Laws 1913, c. 215.) Plaintiff's charter was amended accordingly, and during the taxable years in question the main part of its business was done by making mortgage loans in its own name and selling them to investors, accompanied by its guaranty, and only a small percentage of its business was issuing policies guaranteeing mortgages it had never owned. Thus the bulk of its business was such as might lawfully be done by a corporation organized under the banking law of New York (Consol. Laws N. Y. c. 2), and subject to supervision by the State banking department rather than the insurance department.

Plaintiff's loans were made on application by prospective borrowers, and, when the loan was closed, the borrower received the face amount of his bond and mortgage less plaintiff's charges, consisting of disbursements, chiefly the cost of procuring title insurance from a title insurance company, and of a lending fee, or, on the renewal of a mortgage, an extension fee. Such lending fees and extension fees included plaintiff's charges for appraisals, and were at the prevailing rates charged by other lenders. In disposing of its mortgages, plaintiff either assigned the bond and mortgage in its entirety, accompanied by its regular policy of mortgage guaranty, or assigned fractional interests or participations in a specified mortgage, in which case it issued to the purchaser its "guaranteed first-mortgage certificate," which combined an assignment of a fractional interest in the specified bond and mortgage and a guaranty similar in terms to plaintiff's regular policy of guaranty. In either event plaintiff made no profit on the sale, but sold for the face amount of the mortgage. Its primary purpose in making such loans was not investment, but sale at face value, accompanied by its guaranty.

By the terms of its policy, which is the same whether or not plaintiff sells the mortgage to the holder of its policy, it guarantees to the holder payment of interest at a specified rate within five days after it becomes due under the mortgage, and payment of the principal as and when collected, but in any event within eighteen months after written demand by the policyholder, provided his demand is made after the principal has become due under the terms of the mortgage. By accepting the policy, the holder appoints plaintiff his agent to collect interest and principal as it falls due under the mortgage, authorizes plaintiffs to retain interest collected in excess of the guaranteed rate, usually one-half of 1 per cent, as the "premium" for its guaranty, and agrees that, upon payment by plaintiff of the principal of the mortgage after it has become due, the bond and mortgage are to be assigned to plaintiff.

Commencing with the year 1921, there was a marked increased in building activity in New York City, and a corresponding increase in

the demand for mortgage loans, especially building loans. During the taxable years in question plaintiff's income derived from lending fees and extension fees was nearly half of its total income, and was considerably greater than its "premium" income, and more than twice its "interest" income.

The appellant's contentions are, first, that plaintiff does no insurance whatever, because its policy of guaranty is not a contract of insurance; and, second, that, even if the guaranteeing of mortgages be deemed insurance, it was but incidental to dealing in investments, which constituted the great bulk of plaintiff's business.

It is to be noted that the first contention is as applicable to the guaranty of mortgages which plaintiff has never owned as to
148 those which it sells accompanied by its guaranty. In effect the argument denies the possibility of mortgage insurance, if the "insurer" promises unconditionally to pay the interest and principal upon specified dates whether or not they have been collected from the mortgagor. The argument is too verbal to persuade us. The risk of noncollection is assumed by plaintiff in return for the "premium" reserved out of interest collected. The business of assuming such risks we have held to be insurance for reasons more fully stated in Home Title Ins. Co. v. United States, supra.

The second contention is likewise not sustainable, and was also dealt with in the case last mentioned. Plaintiff made and sold mortgage loans not to make profit on the sales, for there was none, but to enable it to guarantee the mortgages. Its profits lay in its "premiums" and in its lending and extension fees. Such fees we regard as incidental to its business of insuring mortgages. It is true that during the years in question this item grew to enormous proportions, becoming substantially as large as the combined income from premiums and interest. Are we to say that this made plaintiff any less an insurance company? We think not. These incidental fees were the outgrowth of the genuine business of insurance and in earlier years had constituted but a small part of its income. Their tremendous increase in the years in question was during a period of great activity in building loans. Premiums also mounted, but not in like proportion, for they, being based upon interest, were extended throughout the term of the mortgage, while the incidental fees were collected in bulk when the loan was made. It would be possible to say that companies should shift in and out of the class of insurers according as such an incidental item of their income rises or falls. But, as the district judge pointed out, such a result would have disadvantages from the standpoint of administering the tax law, and is not a result likely to have been intended by Congress when the character of the taxpayer's business has not changed, and the only difference arises from the sudden flaring of what had previously been clearly an incident. Consequently, although the facts here presented are somewhat less favorable for the taxpayer than

they were in the Home Title Insurance Company case, the result should be the same, and the judgment is affirmed.

CHASE, Circuit Judge, dissents with opinion.

149 In United States Circuit Court of Appeals for the Second Circuit

No. 16—October term, 1930

Argued January 16, 1931. Decided June 1, 1931

LAWYERS' MORTGAGE COMPANY, PLAINTIFF-APPELLEE

v.

FRANK K. BOWERS, COLLECTOR OF INTERNAL REVENUE, defendant-appellant

Appeal from the District Court of the United States for the Southern District of New York

Before L. HAND, SWAN, and CHASE, Circuit Judges

Dissenting opinion

CHASE, Circuit Judge (dissenting):

In doing that portion of its business which it claims gives it the standing of an insurance company for purposes of taxation, the plaintiff uses some of the language of insurance and of bargain and sale to put into being what seems to me, at least, no more than the obligation of a borrower on collateral security toward its so-called purchasers of mortgages. It has painted a word picture that creates an illusion of insurance, but the language is so transparent that it should not be allowed to obscure the real obligations assumed.

What this plaintiff really does is to lend money, in the first instance, on the security of real-estate first mortgages which it approves and is paid by the borrower for approving. It then becomes necessary for it to tap the reservoir of money controlled by the investing public to replenish its funds for use for additional lending on first mortgages on real estate. To do this, it goes through the form of selling all, or a share only, of a mortgage it holds to some one who is willing to invest money at a rate of return one-half of 1 per cent less than the plaintiff receives on its mortgage. In this way it gets back the face amount of its mortgage in cash, often, if not always, more than it has withdrawn from its own funds to take the mortgage, as the fees charged its borrower have been deducted from the face of the loan it has made, and retains all its rights under

the mortgage it appears to sell, including, of course, the sole right to collect both principal and interest. It has merely subjected the mortgage to reach by the "purchaser" in the event only that the plaintiff ultimately fails to repay that "purchaser" as it has promised. There can be no such default by the plaintiff until the expiration of a period of grace after the due dates of the mortgage both as to principal and interest; that is, its own obligation is fixed in time by a reference to the due dates of the mortgage. But if it does not pay as it has agreed, it is as much in default if the mortgage has been fully paid and discharged as if it has not.

Although use is made of an elaborate verbal means to bring in the money the plaintiff uses in its business and it collects fees and "premiums" as the successive steps are taken both to place money on real-estate loans and to obtain money to be so placed, the insurance business, which my brothers see so clearly, appears to me to be only an investment business disguised as insurance. Because of its own high credit and the borrowing power resulting from that, the plaintiff can, and does, become a borrower itself to the extent of the full face value of the mortgage it has obtained in making its loan and at a lower rate of interest than its own borrower has to pay, and this, upon no additional security than that of the mortgage it holds.

Mere enlargement of business and the multiplication of such
150 transactions can neither serve to spread the risk nor result in insurance of any kind, unless it can be said that the credit of a large and frequent borrower who makes a business of lending the money borrowed is for that reason alone better than the credit of one whose transactions of that nature are comparatively small and few; and so, for some reason I cannot perceive, one who lends to the former gets some kind of insurance by volume. What one of the plaintiff's "purchasers" gets is the promise of the plaintiff to pay unconditionally and this absolute obligation, unrelated to any default by the mortgagor, accrues merely with the lapse of time. The financial responsibility of the plaintiff is fortified by the security of the mortgage. Whatever recognition of the rights of a purchaser of a mortgage are first written into the contract, the plaintiff calls a policy and gives to those from whom it obtains money to use in its business are all written out before the end. The result is that a policyholder has only the primary obligation of the plaintiff to repay the principal of the loan it has received; to pay the agreed rate of interest on it; and, by operation of law, the right to look to the collateral security of the mortgage if the plaintiff defaults.

The taxes the plaintiff has already paid were lawfully assessed and collected.

I would reverse the judgment and remand, with directions to enter judgment for the defendant.

151 In United States Circuit Court of Appeals, Second Circuit

LAWYERS MORTGAGE COMPANY, PLAINTIFF-APPELLEE

v.

FRANK K. BOWERS, AS COLLECTOR, ETC., DEFENDANT-APPELLANT

Judgment

Filed June 8, 1931

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be, and it hereby is, affirmed with interest and costs.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

WM. PARKIN, *Clerk.*

152 [File endorsement omitted.]

153 [Clerk's certificate to foregoing transcript omitted in printing.]

154 Supreme Court of the United States

Order allowing certiorari

Filed October 26, 1931

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] Enter. Atty. Gen. File No. 36169. U. S. Circuit Court of Appeals, Second Circuit. Term No. [illegible]. Frank Collis Bowers, as executor of the estate of Frank [illegible] Bowers, formerly United States collector, etc., petitioner, vs. Lawyers Mortgage Company. Petition for writ of certiorari and exhibit thereto. Filed September 5, 1931. File No. 36169.

U. S. GOVERNMENT PRINTING OFFICE